

No. 16096 ✓

United States
Court of Appeals
for the Ninth Circuit

JOSEPH F. BLAYLOCK, Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

ORLEANS VENEER AND LUMBER CO., a cor-
poration, Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeals from the United States District Court for the Northern
District of California, Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.].

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In the United States District Court, Northern District of California, Southern Division

Civil No. 36569

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH F. BLAYLOCK, HYRUM S. SIMS,
and JOHN H. STEVENS,

Defendants.

COMPLAINT

First Claim

1. This is a civil action brought by the United States of America to which this court's jurisdiction attaches by virtue of Section 1345, Title 28, United States Code.

2. Defendants Joseph F. Blaylock and John H. Stevens both reside in Siskiyou County, and defendant Hyrum S. Sims resides in Placer County, within the jurisdiction of this court, and the real property which is the subject of this action is located within Siskiyou County, California, within the jurisdiction of this court.

3. On September 13, 1921, John Patterson obtained Homestead Patent No. 822606 which described the following land:

The Northeast quarter of the Northwest quarter ($NE\frac{1}{4}NW\frac{1}{4}$), the East half of the East half of the Northwest quarter of the Northwest quarter ($E\frac{1}{2}E\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$), and the

North half of the North half of the Southeast quarter of the Northwest quarter ($N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$), and the Northeast quarter of the Northeast quarter of the Southwest quarter of the Northwest quarter ($NE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$) of Section 34, Township 13 North, range 6 East, H.M., containing 62.50 acres, and the patent was recorded in the Official Records of Siskiyou County in 1956 in Book 371 at page 275. The survey of the township in which said land is located is so erroneous that the patentee mistakenly entered and occupied under the homestead certain land which is now known not to be parts of Section 34 as described in the patent, but which is now known to be portions of the Northwest quarter of the Southwest quarter ($NW\frac{1}{4}SW\frac{1}{4}$), and the Southwest quarter of the Northwest quarter ($SW\frac{1}{4}NW\frac{1}{4}$) of Section 27, and portions of the Southeast quarter of the Northeast quarter ($SE\frac{1}{4}NE\frac{1}{4}$), and the Northeast quarter of the Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$) of Section 28, Township 13 North, Range 6 East, H.M. Plaintiff is now and has at all times been the owner of the lands in Section 34 described herein.

4. The land described in Paragraph 3 was purportedly sold at a tax sale in the year 1947 to defendant Sims and defendant Sims did occupy and receive the benefit from the land which was previously occupied by the original patentee, John Patterson, and which was at all times believed by the parties herein to be the land subject to Patent No. 822606. During his occupancy of said land the

defendant Sims caused a survey to be made in March 1952, at which time it was discovered that the land which had been occupied and patented had been erroneously described in Patent No. 822606. During the occupancy of said homestead by defendant Sims the timber was cut and removed therefrom by defendants Blaylock and Stevens, and the purchase price of the timber was paid to defendant Sims.

5. Defendant Sims sold to defendant Blaylock the land with the improvements thereon which had been occupied by defendant Sims by deed dated June 10, 1956, recorded in Volume 371 at page 26 of the Official Records of Siskiyou County, California, which deed conveyed the land according to the erroneous description contained in Patent No. 822606, being parts of Section 34 as described in Paragraph 3. At that same time defendant Sims gave defendant Blaylock a quitclaim deed to the portions of Sections 27 and 28 described in Paragraph 3. Defendant Blaylock accepted both conveyances with actual knowledge that the land described in the deed of June 10, 1956, as parts of Section 34, was not located as described therein but was in fact located in parts of Sections 27 and 28, as hereinabove alleged.

6. Defendant Blaylock claims a right to cut the timber on the lands in Section 34 above described, and on June 18, 1957, defendant Blaylock advised plaintiff that he intended to begin cutting that timber on Monday, June 24, 1957. On June 21, 1957, defendant Blaylock informed plaintiff that he had

already commenced cutting the timber on Section 34 earlier that day.

7. Defendant Blaylock will, unless restrained, continue the wrongful and unlawful cutting and removal of the timber on the lands on Section 34 hereindescribed in paragraph 3. The unlawful and wrongful actions of defendant Blaylock will deprive plaintiff of the benefits and control of the timber, and will result in great and irreparable injury to plaintiff's real property and the standing timber thereon in the parts of Section 34 described in Paragraph 3. Plaintiff alleges on information and belief that defendant Blaylock would be unable to respond to plaintiff in damages for the cutting and removal of the timber.

Second Claim

1. This is a claim brought by the United States of America for damages for trespass and conversion of timber, and is alternative to the First Claim herein.

2. Plaintiff is now and was at all times material to this complaint the owner of the lands in Section 27 and 28 described in Paragraph 3 of the First Claim and the timber thereon.

3. During the year 1952 and in subsequent years the defendants Sims, Blaylock and Stevens cut and removed approximately three million board feet of plaintiff's timber from the plaintiff's lands on Sections 27 and 28. The fair market value of which timber was at least \$15,000.

Wherefore, plaintiff prays:

1. That a Temporary Restraining Order, and a Temporary Injunction and a Permanent Injunction be issued against defendant Joseph F. Blaylock restraining and enjoining him from cutting, removing, mutilating or destroying timber on lands described as the NE $\frac{1}{4}$ NW $\frac{1}{4}$, the E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, and the N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, Township 13 North, Range 6 East, H.M.; that the court decree a reformation of Patent No. 822606 to show that the lands patented are the parts of Sections 27 and 28 described in Paragraph 3 of the First Claim; for a declaratory judgment that plaintiff is the owner of the part of Section 34 described above; or, in the alternative for judgment against defendants Joseph F. Blaylock, John H. Stevens, and Hyrum S. Sims, jointly and severally, in the amount of Fifteen Thousand Dollars (\$15,000).

2. For judgment against defendants Joseph F. Blaylock, John H. Stevens, and Hyrum S. Sims, jointly and severally, for costs of this action; and for such other relief as to this court may seem just and proper.

/s/ LLOYD H. BURKE,

United States Attorney,

/s/ JAMES B. SCHNACKE,

Assistant U. S. Attorney,

/s/ BERNARD PETRIE,

Assistant U. S. Attorney,

Attorneys for Plaintiff.

Duly Verified.

[Endorsed]: Filed June 21, 1957.

In the United States District Court, Northern District of California, Southern Division

Civil No. 36569

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH F. BLAYLOCK; GUY HEAD; ORLEANS VENEER and LUMBER CO., a corporation; HYRUM S. SIMS; EDWARD E. HEAD, doing business as HEAD LUMBER COMPANY and as SISKIYOU MILLS, a partnership; JOHN H. STEVENS; and HAROLD LEEVERS and IRIS LEEVERS, a partnership, doing business as WILLAMETTE BUILDERS SUPPLY,

Defendants.

AMENDED COMPLAINT

The United States of America, for its amended complaint, states:

First Claim

1. Plaintiff brings this action under 28 U.S.C. § 1345 against defendants Blaylock, Guy Head and Orleans Veneer and Lumber Co.

2. Prior to 1921 John Patterson occupied certain land (hereinafter called parcel 1) in the Klamath National Forest, Siskiyou County, California, as a homestead under entry number 02665 and applied for a patent covering the land.

3. On September 13, 1921, plaintiff issued to Patterson Homestead Patent No. 822,606, which

patent contained the following description intended by plaintiff and Patterson to cover parcel 1:

Northeast quarter of the northwest quarter, the east half of the east half of the northwest quarter of the northwest quarter, the north half of the north half of the southeast quarter of the northwest quarter and the northeast quarter of the northeast quarter of the southwest quarter of the northwest quarter of Section thirty-four in Township thirteen north of Range six east of the Humboldt Meridian, California, containing sixty-two and fifty-hundredths acres.

4. The description contained in Homestead Patent No. 822,606, because of mistake, did not cover parcel 1 but instead covered another parcel of land owned by plaintiff (hereinafter called parcel 2).

5. In June, 1943, a deed was executed between the Tax Collector of Siskiyou County and the State of California which deed purported to transfer certain property to the State of California for non-payment of taxes and which deed contained the following description: "Homestead Entry #02655 in NW $\frac{1}{4}$ Desig. Plat #4 Sec 34 Twp 13 R, 6E HM Ditch and Water right".

6. In January, 1946, defendant Sims as a result of a tax sale took a deed from the State of California with the following description: "H. E. #02665 Por. of NW $\frac{1}{4}$ (Ditch & Water Right) Section 34, Twp. 13 North, Range 6 East HM". Defendant Sims intended to buy parcel 1.

7. In 1952 defendant Sims caused a survey of

parcel 1 to be made. The survey disclosed the mistake made in the description contained in Homestead Patent No. 822,606. According to the survey, parcel 1 lies in sections 27 and 28 instead of in section 34, Township 13 North, Range 6 East, Humboldt Meridian.

8. The true description of parcel 1 is not that contained in Homestead Patent No. 822,606 but is as follows:

From the quarter corner common to sections 20 and 29, Township 13 North, Range 6 East, Humboldt Meridian, South 66 degrees 09 minutes east for 8,038.96 feet, thence east 1,650 feet, thence north 1,650 feet, thence west 1,650 feet and thence south 1,650 feet.

9. In 1952 plaintiff agreed to allow defendant Sims to exercise acts of ownership in parcel 1, and defendant Sims agreed to seek a correction of his documents of title at such time as an official resurvey could be made.

10. Thereafter, in 1953, 1955 and 1956 defendant Sims caused parcel 1 to be logged.

11. In July, 1956, defendant Sims conveyed his interest in parcel 1 to defendant Blaylock by quitclaim deed and also delivered to defendant Blaylock a deed containing the description contained in Homestead Patent No. 822,606. When taking both deeds defendant Blaylock knew or should have known that any interest of defendant Sims in parcel 2 was subject to being divested by plaintiff.

12. In July, 1956, defendant Blaylock delivered to defendant Guy Head a deed of trust containing

the description contained in Homestead Patent No. 822,606. That deed of trust has not been recorded.

13. At 8:30 a.m. on July 1, 1957, a notice of the pendency of this action was filed by plaintiff with the County Recorder of Siskiyou County.

14. On December 1, 1956, defendant Blaylock delivered to defendant Orleans Veneer and Lumber Co. an instrument which purported to assign his interest in the deed taken from defendant Sims containing the description contained in Homestead Patent No. 822,606. The instrument did not pass any legal interest in parcel 2 to defendant Orleans Veneer and Lumber Co. When receiving that instrument defendant Orleans Veneer and Lumber Co. knew or should have known that any interest of defendant Blaylock in parcel 2 was subject to being divested by plaintiff.

15. Defendant Blaylock claims to own parcel 2. He threatens to log parcel 2 and on June 21, 1957, cut timber on parcel 2.

16. Any logging by defendant Blaylock on parcel 2 would result in great and irreparable injury to plaintiff.

Second Claim

1. Plaintiff brings this action under 28 U.S.C. § 1345 against defendant Sims.

2. Plaintiff realleges paragraphs 2 through 8 and paragraph 10 of the first claim.

3. After the survey of his property in 1952 defendant Sims by letter dated March 19, 1952, copy of which is attached hereto as exhibit 1, advised

plaintiff of the mistake in the description in Homestead Patent No. 822,606 and asked that his ownership of parcel 1 be recognized. Defendant Sims, in writing exhibit 1 and at other times thereafter, agreed to refrain from exercising any acts of ownership over parcel 2 and to seek a correction of the description contained in his documents of title to show his ownership of parcel 1.

4. Thereafter, by letter dated July 23, 1952, copy of which is annexed hereto as exhibit 2, plaintiff recognized the rights of defendant Sims in parcel 1 and agreed to accept an amended patent description at such time as a re-survey could be made.

5. In July, 1956, defendant Sims conveyed his interest in parcel 1 to defendant Blaylock by quitclaim deed and also delivered to defendant Blaylock a deed containing the description contained in Homestead Patent No. 822,606, in breach of his agreement with plaintiff.

6. In July, 1956, defendant Blaylock delivered to defendant Guy Head a deed of trust covering parcel 2.

7. On December 1, 1956, defendant Blaylock delivered to defendant Orleans Veneer and Lumber Co. an instrument of assignment purporting to cover parcel 2.

8. If defendants Blaylock, Guy Head or Orleans Veneer and Lumber Co. are able to resist plaintiff's action for reformation stated in the first claim, plaintiff will lose parcel 2 because of the breach by defendant Sims alleged in paragraph 5.

9. Parcel 2 is worth \$15,000.

Third Claim

1. Plaintiff brings this action under 28 U.S.C. § 1345 against defendants Sims, Ed Head, Stevens and Blaylock.

2. Plaintiff realleges paragraphs 2 to 8 of the first claim.

3. Plaintiff is and was at all times pertinent hereto the owner of parcel 1 and the timber standing thereon.

4. In 1953, 1955 and 1956 defendant Sims trespassed upon parcel 1 and caused to be logged therefrom 2,355,970 feet board measure worth \$19,601.

5. In April and May, 1953, defendant Ed Head, doing business as the Head Lumber Company, trespassed upon parcel 1 and logged therefrom 1,554,780 feet board measure worth \$13,993.

6. In September, October and November, 1955, defendants Stevens and Blaylock trespassed upon parcel 1 and logged therefrom 660,170 feet board measure worth \$4,621.

7. In April and May, 1956, defendant Blaylock trespassed upon parcel 1 and logged therefrom 141,020 feet board measure worth \$987.

Fourth Claim

1. Plaintiff brings this action under 28 U.S.C. § 1345 against defendants Ed Head, Orleans Veneer and Lumber Co., Harold Leever and Iris Leever.

2. Plaintiff realleges paragraphs 2 to 7 of the third claim.

3. In April and May, 1953, defendant Ed Head, doing business as the Head Lumber Company,

bought 1,554,780 feet board measure of plaintiff's timber cut in trespass worth \$13,993 without compensating plaintiff.

4. In September and October, 1955, defendant Ed Head, doing business with others as Siskiyou Mills, a partnership, bought 527,790 feet board measure of plaintiff's timber cut in trespass worth \$3,694.53 without compensating plaintiff.

5. In October, 1955, defendant Orleans Veneer and Lumber Co., a corporation, bought 57,500 feet board measure of plaintiff's timber cut in trespass worth \$402.50 without compensating plaintiff.

6. In October and November, 1955, defendants Harold Leever and Iris Leever, doing business as Willamette Builders Supply, a partnership, bought 74,880 feet board measure of plaintiff's timber cut in trespass worth \$524.16 without compensating plaintiff.

7. In April and May, 1956, defendant Ed Head, doing business with others as Siskiyou Mills, a partnership, bought 141,020 feet board measure of plaintiff's timber cut in trespass worth \$987.00 without compensating plaintiff.

Fifth Claim

1. Plaintiff brings this action under 28 U.S.C. § 1345 against defendant Sims.

2. Plaintiff realleges paragraphs 2 to 4 of the third claim.

3. Between 1953 and 1956 defendant Sims sold the timber logged from parcel 1 in trespass and by such sale was enriched unjustly in the sum of \$13,733.72.

4. Plaintiff has not been compensated for its timber sold by defendant Sims, and the sum of \$13,733.72 is rightfully due plaintiff.

Wherefore, plaintiff demands:

1. That a temporary restraining order, a preliminary injunction and a final injunction be issued against defendant Blaylock restraining him from entry upon parcel 2 and from logging the timber thereon.

2. That defendant Blaylock be compelled to deed to the plaintiff the following land:

Northeast quarter of the northwest quarter, the east half of the east half of the northwest quarter of the northwest quarter, the north half of the north half of the southeast quarter of the northwest quarter and the northeast quarter of the northeast quarter of the southwest quarter of the northwest quarter of Section thirty-four in Township thirteen north of Range six east of the Humboldt Meridian, California, containing sixty-two and fifty-hundredths acres.

and that such land be adjudged to belong to plaintiff free of any liens, including any liens which might be asserted by defendants Guy Head and Orleans Veneer and Lumber Co.

3. That reformation be decreed of Homestead Patent No. 822,606 to contain the following description:

From the quarter corner common to sections 20 and 29, Township 13 North, Range 6 East,

Humboldt Meridian, South 66 degrees 09 minutes east for 8,038.96 feet, thence east 1,650 feet, thence north 1,650 feet, thence west 1,650 feet and thence south 1,650 feet.

4. Alternatively to paragraphs 1, 2 and 3, judgment against defendant Sims for \$19,601, and against the following defendants, jointly and severally with defendant Sims, for the following amounts: Ed Head for \$18,674.53; Blaylock for \$5,608; Stevens for \$4,621; Orleans Veneer and Lumber Co. for \$402.50; and Harold Leever and Iris Leever for \$524.16.

5. Judgment against all defendants, jointly and severally, for costs and for such other and further relief as is just.

August 19, 1957.

/s/ LLOYD H. BURKE,
United States Attorney,
/s/ BERNARD PETRIE,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

EXHIBIT No. 1

(Copy)

March 19, 1952

Klamath Forest Supervisor,
Yreka, California.

Dear Sir:

About five years ago I obtained a parcel of land amounting to 62½ acres in the Klamath forest. This was through a tax sale by Siskiyou County.

The land was advertised according to law, and sold to me as the highest bidder. Since then I have resided continually on same and have made my home there. This land was homesteaded by John Patterson in 1921 and lies in Section 34, Township 13N—R 6 E, Siskiyou County. Legal description as follows:

NE $\frac{1}{4}$ NW $\frac{1}{4}$ —E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ —NE $\frac{1}{4}$
NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ —N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ —
R6-E HM 62-50 Acres List 5-2436 Serial 02655

The buildings have been on the place approximately forty years and the corner marked by the forest service is clearly shown on a map prepared by A. F. Parrott, Siskiyou County official surveyor. I have spent quite a lot of money on a road to the place and rebuilding.

Last week I called Mr. Parrott to come down and survey this ground and mark all four corners. He ran a line from an established section line corner on the Klamath river road to my property and found that there was an approximate two thousand foot discrepancy in the locations. The place where I am living is in Section 27 and 28, and the land described legally as mine is in Section 34 an unimproved, untouched piece of heavily timbered land. The land I thought I owned has all my buildings on it and a large meadow, access road, fences, etc. What I want to do is to make an exchange so a new legal description will fit my ground.

For information and a complete clear map of the

situation, contact Mr. A. Parrott, Siskiyou County Surveyor.

Please advise me as soon as possible as to the procedure to pursue from this point on. I have contacted the Land Management Office here and they referred me to you as the necessary first step in this matter. This is an urgent matter, and if you can expedite it in any way, I would be very grateful.

Yours truly,

/s/ H. S. Sims

H. S. Sims

1316 O Street, Apt. 1, Sacramento, Calif.

EXHIBIT No. 2

(Copy)

July 23, 1952

U

Adjustments—Klamath

Patterson, John (H. E. Sims)

H.E. 02655 (List 5-2436)

Mr. H. E. Sims

1316 O Street, Apt. 1, Sacramento, California

Reference is made to your recent visit to our office and our letter of April 11, 1952.

To further clarify your understanding of our letter and conversation, the following is the situation that exists:

1. We recognize your right to the 62½ acre tract now occupied and marked by the property corner you described. You can go ahead with the development of the 62½ acre tract even though the de-

scription is in error. This includes cutting of the timber.

2. We would be willing to accept an amended patent description covering the 62½ acres when a re-survey is made.

3. It will be necessary for you to secure a special use permit for construction of a road to your tract. Application for such a road should be made to the District Ranger at Happy Camp, California.

We will be happy to cooperate with you in the future in settling any further problems that may come up.

Very truly yours,

R. W. Bower,

Forest Supervisor

cc—Ranger Scherer

RWBower/kd

Duly Verified.

[Endorsed]: Filed August 26, 1957.

[Title of District Court and Cause.]

ANSWER TO AMENDED COMPLAINT

Comes now defendant Joseph F. Blaylock and answers the amended complaint on file as follows:

Denies, all and the singular, both generally and specifically, conjunctively and disjunctively, the allegations contained in the 1st, 2nd, 3rd, 4th and 5th of plaintiff's amended complaint except as follows:

1. Admits that plaintiff issued to John Patter-

son under Homestead entry numbered 02665 and patent number 822606, the patent covering the following described real property in Siskiyou County, California:

Northeast quarter of the northwest quarter, the east half of the east half of the northwest quarter of the northwest quarter, the north half of the north half of the southeast quarter of the northwest quarter and the northeast quarter of the northeast quarter of the southwest quarter of the northwest quarter of Section thirty-four in Township thirteen north of Range six east of the Humboldt Meridian, California, containing sixty-two and fifty-hundredths acres.

2. That the facts stated in paragraph 5 of the first claim are true.

3. That as a result of the tax sale on the State of California to H. E. Sims, the said H. E. Sims did take a deed from the State of California to a fractional portion of the southwest portion of the section 34 Township 13, N Range 6 E., Humboldt Meridian.

4. That defendant, Joseph F. Blaylock, did take a deed to the property described in paragraph 1, from H. E. Sims in July of 1956.

5. That defendant, Joseph F. Blaylock, did take a quit claim deed covering the personal property situated on fractional portions of sections 27 and 28, township 13 N, Range 6 E., Humboldt Meridian but not the real property itself.

6. That the facts alleged paragraph 12 of the

first claim are true except that this answering defendant has no knowledge of recordation.

7. That defendant, Blaylock, did deliver to Orleans Veneer & Lumber Company an assignment of the deed of the property described in paragraph 1 above.

8. That the facts alleged in paragraph 6 of second claim are true.

9. That the facts alleged in paragraph 7 of second claim are true.

For a First Affirmative Defense, This Answering Defendant Alleges:

I.

That defendant Joseph F. Blaylock is the owner in fee simple absolute of the following described land situated in Siskiyou County, California:

The Northeast quarter of the Northwest quarter ($NE\frac{1}{4}NW\frac{1}{4}$), the East half of the East half of the Northwest quarter of the Northwest quarter ($E\frac{1}{2}E\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$), and the North half of the North half of the Southeast quarter of the Northwest quarter ($N\frac{1}{2}N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$), and the Northeast quarter of the Southwest quarter of the Northwest quarter ($NE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$) of Section 34, Township 13 North, Range 6 East, H.M., containing 62.50 acres.

II.

That defendant Joseph F. Blaylock purchased such real property from Hyrum Sims from a deed

recorded in the official records of Siskiyou County in Book 371 at page 275.

III.

That prior to the recordation of the aforesaid deed, defendant Joseph F. Blaylock did deposit with the Siskiyou County Title Co. the sum of \$12,000.00, together with instructions that upon their determination that title to the above described property would be insured in the said Joseph F. Blaylock in the sum of \$12,000.00, to deliver such money and to record such deed; that such transaction was undertaken by defendant Joseph F. Blaylock under the belief in good faith that the said Hyrum Sims did have the legal capacity to convey title to such property which said reliance was based upon the official records of the County of Siskiyou and the advice of the Siskiyou County Title Co.; that defendant Joseph F. Blaylock is informed and believes and therefore, alleges that defendant Hyrum Sims likewise believed that he was the owner of the above described property and that he had the legal authority to convey the same.

For a Second Affirmative Defense, This Answering Defendant Alleges:

I.

Re-alleges as if fully set forth at this point Paragraph I of defendant's first affirmative defense.

II.

That this answering defendant is the owner and possessed in fee simple absolute of such property

from deeds recorded in a chain of title from this answering defendant directly to the United States of America by virtue of its patent issued on or about September 13, 1921.

III.

That if any discrepancy in the land intended to be conveyed by the United States and the land conveyed did exist, such discrepancy has been known to the United States of America for the last five years and that the United States has made no attempt to alter, reform, reissue or otherwise correct the chain of title, as shown in the official records of the county recorder of Siskiyou County, California and that, therefore, said United States of America is guilty of laches or should be estopped to assert such defect or both.

Wherefore, this answering defendant prays that plaintiff take nothing by its complaint and that title to the within described property be quieted in defendant Joseph F. Blaylock as to any claims of the United States of America, and for such other and further relief as to the Court may seem just.

BURTON, LEE & HENNESSY,

/s/ By MICHAEL T. HENNESSY,

Attorneys for Defendant Joseph F.
Blaylock.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 5, 1957.

[Title of District Court and Cause.]

ANSWER TO AMENDED COMPLAINT

Comes now the Defendant Orleans Veneer and Lumber Co., a corporation, and severing itself from its co-defendants and answering the First Claim and Fourth Claim naming said Defendant, admits, denies and alleges as follows:

First Claim

I.

Answering Paragraph 2 of said First Claim, this Defendant having no information or belief upon the subject matter mentioned in said paragraph 2 of Plaintiff's First Claim, sufficient to enable it to answer any of the allegations therein contained, and placing its denial upon that ground, denies each, every, all and singular the allegations and statements set forth therein.

II.

Answering Paragraph 3 of said First Claim, this Defendant admits that on September 13, 1921 Plaintiff issued to Patterson Homestead Patent No. 822,606, covering the property described in said paragraph, and further denies each, every, all and singular the remaining statements and allegations in said paragraph contained.

III.

Answering Paragraph 4 of said First Claim, this Defendant having no information or belief upon

the subject matter mentioned in said paragraph 4 of Plaintiff's First Claim sufficient to enable it to answer any of the allegations therein contained, and placing its denial upon that ground, denies each, every, all and singular the allegations and statements therein contained.

IV.

Answering Paragraph 6 of said First Claim, this Defendant admits that as a result of the tax sale of the State of California to H. E. Sims that said H. E. Sims did take a deed from the State of California to a fractional portion of Section 34, Township 13 North, Range 6 East, Humboldt Meridian, and further denies each, every, all and singular the remaining statements and allegations in said paragraph contained.

V.

Answering Paragraphs 7, 8, 9 and 10 of said First Claim this Defendant having no information or belief upon the subject matter mentioned in said Paragraphs 7, 8, 9 and 10 of Plaintiff's First Claim, sufficient to enable it to answer any of the allegations contained therein, and placing its denial upon that ground, denies, each every, all and singular the statements and allegations set forth in said Paragraphs 7, 8, 9 and 10 of Plaintiff's First Claim.

VI.

Answering Paragraph 11 of said First Claim, this Defendant admits that Defendant Sims conveyed certain property to Defendant Blaylock by

deed in July of 1956 which deed contained the description in Homestead Patent No. 822,606, and as set forth in Paragraph 3 of Plaintiff's First Claim, and further answering said paragraph, this Defendant denies each, every, all and singular the remaining statements and allegations contained in said paragraph.

VII.

Answering Paragraphs 12 and 13 of said First Claim, this Defendant having no information or belief upon the subject matter mentioned in said Paragraphs 12 and 13 of Plaintiff's First Claim sufficient to enable it to answer any of the allegations contained therein, and placing its denial upon that ground, denies each, every, all and singular the statements and allegations set forth in said Paragraphs.

VIII.

Answering Paragraph 14 of said First Claim, this Defendant admits that on December 1, 1956 Defendant Blaylock delivered to this Defendant an instrument assigning and transferring to this Defendant all of Defendant Blaylock's right, title and interest in and to that certain deed of Defendant Sims to Defendant Blaylock containing the description as set forth in Paragraph 3 of Plaintiff's First Claim, a copy of which assignment and transfer to this Defendant, as recorded on December 11, 1956 in Siskiyou County Official Records, Volume 378, Page 346, is attached hereto, marked Exhibit A, and made a part hereof as though fully set forth herein, and further answering said Paragraph 14

of said First Claim, this Defendant denies each, every, all and singular the other and remaining statements and allegations set forth therein.

IX.

Answering Paragraph 15 of said First Claim, this Defendant admits that Defendant Blaylock claims to own the parcel herein described as Parcel 2, subject to the above assignment and transfer to this Defendant.

X.

Answering Paragraph 16 of said First Claim, this Defendant denies each, every, all and singular the statements and allegations set forth therein.

Fourth Claim

I.

Answering Paragraph 2 of said Fourth Claim, this Defendant realleges his answers to Paragraphs 2, 3, 4, 5, 6, 7 and 8 of its First Claim, as referred to in the Third Claim by reference in the Fourth Claim, and further, having no information or belief upon the subjects mentioned in Paragraphs 3, 4, 5, 6, and 7 of said Third Claim, as referred to in the Fourth Claim, sufficient to enable it to answer any of the allegations or statements therein contained and placing its denial upon that ground, this Defendant denies each, every, all and singular the statements and allegations set forth therein.

II.

Answering Paragraphs 3, 4, 6 and 7 of said Fourth Claim, this Defendant having no informa-

tion or belief upon the subject matter mentioned in said paragraphs sufficient to enable it to answer any of the allegations contained therein, and placing its denial upon that ground, denies each, every, all and singular the statements and allegations set forth in said paragraphs.

III.

Answering Paragraph 5 of said Fourth Claim, this Defendant denies each, every, all and singular, generally and specifically, the statements and allegations set forth in said Paragraph 5.

For a further and separate and affirmative defense, this answering Defendant alleges as follows:

I.

That Defendant Joseph F. Blaylock is the owner in fee simple absolute of the property described in Paragraph 3 of the First Claim of this Amended Complaint, subject to the interest of this Defendant as set forth in Exhibit A attached hereto and made a part hereof.

II.

That Defendant Joseph F. Blaylock purchased said real property from Hyrum S. Sims, as evidenced by a deed dated July 9, 1956 and recorded in the Official Records of Siskiyou County in Book 371, Page 276 on July 10, 1956.

III.

That prior to the recordation of the instrument attached hereto and marked Exhibit A, this De-

fendant did deposit with the Siskiyou County Title Company the sum of Nine Thousand Dollars (\$9,000.00) together with its instructions that upon their determination that title to the subject property was in Joseph F. Blaylock and that they would furnish their policy of title insurance insuring this Defendant in said amount, subject only to the assignment to this Defendant, the usual printed exceptions of the title policy and taxes for the current year, that they could release the \$9,000.00, the amount of the title policy, to Joseph F. Blaylock; that such transaction and undertaking by this Defendant was made under the belief in good faith that said Joseph F. Blaylock did have the legal capacity to assign the said deed and that he was the legal owner of said property, which said reliance was based on the official records of the County of Siskiyou and the advice of the Siskiyou County Title Company; that this Defendant is informed and believes and therefore alleges that Defendant Joseph F. Blaylock and Defendant Hyrum S. Sims likewise believed that Joseph F. Blaylock was the owner of the subject property and that Hyrum S. Sims had legal authority to deed to Joseph F. Blaylock, and that Joseph F. Blaylock had legal authority to assign and transfer, as in Exhibit A set forth, and this Defendant is a bona fide mortgagee or transferee.

For a second, separate, further and affirmative defense this answering Defendant alleges as follows:

I.

Realleges as if fully set forth at this point Paragraph I of this Defendant's first affirmative defense.

II.

That Defendant Joseph F. Blaylock is the owner and possessed in fee simple absolute of such property subject to the rights of this Defendant by reason of Exhibit A attached hereto, by reason of the deeds recorded in the chain of title from this answering Defendant and Joseph F. Blaylock to the United States of America by virtue of its original patent issued on or about September 13, 1921.

III.

That if any discrepancy in the land intended to be conveyed by the United States of America in its original patent, and the land conveyed did or does now exist, such discrepancy has been known to the United States of America for the last five (5) years, and that the United States of America has made no attempt to alter, reform, reissue or otherwise correct the chain of title, as shown in the official records of the County Recorder of Siskiyou County, California, and that therefore said United States of America is guilty of laches, or should be estopped to assert such defect, or both.

Wherefore, this answering Defendant prays that Plaintiff take nothing by its Amended Complaint, and that title to the within described property be quieted in Defendant Joseph F. Blaylock, subject

to the rights of this answering Defendant by reason of Exhibit A, as to any claims of the United States of America, and for such other and further relief as to the Court may seem just and equitable.

HUBER & GOODWIN,

/s/ By NORMAN C. CISSNA,

Attorneys for Defendant Orleans
Veneer and Lumber Co.

Duly Verified.

EXHIBIT "A"

As security for the payment and the performance of all other terms and conditions of that certain Agreement dated 12/1/56 between Joseph F. Blaylock and Orleans Veneer and Lumber Co., a corporation, I, Joseph Blaylock, do hereby assign and transfer to Orleans Veneer and Lumber Co. all of my right, title and interest in and to that certain deed dated July 9, 1956 covering the following described property.

That real property situated in the County of Siskiyou, State of California, described as follows:

The northeast quarter of the northwest quarter; the east half of the east half of the northwest quarter of the northwest quarter; the northeast quarter of the northeast quarter of the southwest quarter of the northwest quarter; the north half of the north half of the southeast quarter of the northwest quarter in

Section 34, Township 13 North, Range 6 East,
Humboldt Meridian.

This assignment and transfer is not a sale, but is solely by way of security. In case of any default hereunder or of said Agreement, Orleans Veneer and Lumber Co., may enforce its rights under this assignment and transfer either as a pledgee, mortgagee or in any other manner permitted or provided by law. This assignment and transfer shall not be discharged or otherwise impaired by any extension of payment or renewal of said Agreement.

This assignment and transfer may be recorded at the option of Orleans Veneer and Lumber Co., and in the event it is so recorded, I agree to pay all recordation charges, including recordation of any reassignment or re-transfer of said deed to me. I shall pay all costs and expenses (including attorney's fees in a reasonable amount) to enforce this assignment and transfer in the event of default hereunder or under said agreement.

Dated: 12/1/56.

/s/ By Joseph F. Blaylock.

I hereby consent to the above assignment.

/s/ Vanda K. Blaylock,
Wife of Joseph F. Blaylock.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 20, 1957.

[Title of District Court and Cause.]

MEMORANDUM OPINION

Roche, Chief Judge:

The United States of America brings this action under 28 U.S.C. § 1345 (1952) against defendants Joseph Blaylock, Guy Head, and Orleans Veneer and Lumber Co., praying for: (1) a permanent injunction against Blaylock, restraining him from entry upon certain land in the Klamath National Forest and from logging the timber thereon; (2) a deed from Blaylock to plaintiff of this same land and judgment that the land belongs to plaintiff free of any liens; and (3) reformation of Homestead Patent No. 822,606 to contain a corrected legal description of the land patented under it.

The record discloses that, prior to 1921, John Patterson occupied certain land (hereafter called Parcel 1) in the Klamath National Forest, Siskiyou County, California, as a homestead under entry number 02655 and applied for a patent covering the land. On September 13, 1921, plaintiff issued to John Patterson Homestead Patent No. 822,606, which patent contained the following description intended by plaintiff to cover Parcel 1:

Northeast quarter of the northwest quarter, the east half of the east half of the northwest quarter of the northwest quarter, the north half of the north half of the southeast quarter of the northwest quarter and the northeast quarter of the northeast quarter of the south-

west quarter of the northwest quarter of Section thirty-four in Township thirteen north of Range six east of the Humboldt Meridian, California, containing sixty-two and fifty-hundredths acres.

The evidence shows that the description contained in Homestead Patent No. 822,606, because of mistake, did not cover Parcel 1 but instead covered another parcel of land in the Klamath National Forest owned by plaintiff (hereafter called Parcel 2).

The record shows that, in June 1943, a deed was executed between the Tax Collector of Siskiyou County and the State of California for purporting to transfer certain property to the State of California for non-payment of taxes. This deed contained the following description: "Homestead Entry #02-655 in NW $\frac{1}{4}$ Desig. Plat #4 Sec 34 Twp 13 R, 6E HM Ditch and Water Right." In January 1946, as a result of a tax sale, Hyrum S. Sims took a deed from the State of California with the following description: "H.E. #02665 Por. of NW $\frac{1}{4}$ (Ditch & Water Right) Section 34, Twp. 13 North, Range 6 East H.M." The evidence shows that Sims intended to buy Parcel 1.

In 1952, Sims had Albert Parrott, Siskiyou County Surveyor, make a survey of Parcel 1. According to that survey, Parcel 1 lies in sections 27 and 28, instead of section 34, Township 13 North, Range 6 East, Humboldt Meridian. The record shows the true description of Parcel 1 to be:

From the quarter corner common to sections 20 and 29, Township 13 North, Range 6 East,

Humboldt Meridian, South 66 degrees 09 Minutes east for 8,038.96 feet, thence east 1,650 feet, thence north 1,650 feet, thence west 1,650 feet and thence south 1,650 feet.

Upon learning of the mistaken description in his title, the record shows that Sims wrote to the Klamath Forest Supervisor on March 19, 1952 for advice about securing a proper legal description for Parcel 1. The Forest Supervisor, in a letter of July 23, 1952, recognized Sims' right to Parcel 1 where he was living, permitting him to cut timber on it and indicating that the Forest Supervisor would accept an amended patent description covering Parcel 1. Thereupon, Sims had Parcel 1 logged in 1953, 1955, and 1956. One of the men who logged in 1955 and 1956 was defendant Blaylock.

On July 9, 1956, the record shows, Sims conveyed his interest in Parcel 1 to Blaylock by quitclaim deed and also delivered to Blaylock a grant deed containing the description of Parcel 2. Plaintiff alleges that, when taking both deeds, Blaylock knew that any interest of Sims in Parcel 2 was subject to being divested by plaintiff.

The evidence shows that, in July 1956, Blaylock delivered to defendant Guy Head a deed of trust containing the description of Parcel 2 as security for Guy Head's co-signing a note with Blaylock. That deed of trust has not been recorded. The record further discloses that, on December 1, 1956, Blaylock delivered to defendant Orleans Veneer and Lumber Co. an instrument purporting to assign his interest in the grant deed covering Parcel

2. Plaintiff alleges that this instrument did not pass any legal interest in Parcel 2 to Orleans Veneer and Lumber Co. Plaintiff further alleges that, when receiving the instrument, Orleans Veneer and Lumber Co. knew or should have known that any interest of Blaylock in Parcel 2 was subject to being divested by plaintiff.

Since Blaylock claims to own Parcel 2 and has cut timber on it, plaintiff sought and received a preliminary injunction restraining Blaylock from cutting or removing timber on Parcel 2. It is this injunction which plaintiff seeks to have made permanent.

The record discloses that plaintiff has a right to reformation of the patent and subsequent documents of title. Blaylock's first defense is that his purchase of Parcel 2 from Sims, in good faith, for value, and without notice, extinguished plaintiff's right of reformation. However, the evidence shows that Blaylock knew of Sims' arrangement with the Forest Service under which Sims could log Parcel 1 in spite of documents of title showing him to be the owner of Parcel 2. Sims had given Blaylock a copy of Parrott's survey map, which show both the "location of Patterson patent and H. S. Sims as occupied previous to homestead application of 1921 and continuous to date" (Parcel 1) and the "location of Patterson patent as per records 62.5 acres" (Parcel 2). Sims had also told Blaylock that Blaylock would not have any right to timber on Parcel 2. Therefore, Blaylock was not a bona fide pur-

chaser when he took a grant deed from Sims to Parcel 2.

Blaylock's second defense is that plaintiff's right of reformation had been extinguished before Blaylock bought from Sims. Blaylock contends that the transfer of Parcel 2 to the State of California in 1943 for unpaid taxes and Sims' purchase of Parcel 2 at a tax sale in 1946 were both bona fide purchases cutting off plaintiff's equity of reformation. The record discloses that the United States has always been in possession of Parcel 2. The United States had a right against Patterson to reform the patent to show that the United States was the real owner of Parcel 2. This right cannot be cut off by State taxing power. The State of California never had jurisdiction to tax Parcel 2. Defects in tax titles and tax deeds fall into two categories, procedural and jurisdictional. A state may enact statutes declaring that a tax deed is conclusive evidence of title so far as procedural defects are concerned, but such statutes cannot relieve jurisdictional defects inasmuch as that would constitute an unconstitutional confiscation of property. *Miller vs. McKenna*, 23 C. 2d 774, 147 P. 2d 531 (1944); accord, *Sheeter vs. Lifur*, 113 C.A. 2d 729, 249 P. 2d 336 (1952).

Blaylock's third defense is that plaintiff should be denied its relief on the equitable ground of laches. The ordinary defense of laches is not available against the United States. The United States holds its lands in trust for the people. Officers or employees of the United States who have no au-

thority to dispose of United States property cannot by their conduct cause the United States to lose its valuable rights in such property by their acquiescence or failure to act. *United States vs. California*, 332 U.S. 19, 40 (1946).

Plaintiff's right of reformation cannot be extinguished by transfer of a title acquired by the State of California for unpaid taxes on land which was never within the State of California's taxing jurisdiction. See *Miller vs. McKenna*, 23 C. 2d 774, 147 P. 2d 531 (1944). Accordingly, the court finds no merit in the defense of Orleans Veneer and Lumber Co. Orleans Veneer and Lumber Co. cannot acquire rights in Parcel 2 superior to those of plaintiff because the origin of Orleans Veneer and Lumber Co.'s claim is a tax deed defective for want of taxing jurisdiction. Cf. *Gaspard vs. Edward M. LeBaron, Inc.*, 107 C.A. 2d 356, 237 P. 2d 278 (1951).

Plaintiff's prayer for:

(1) a permanent injunction against Blaylock, restraining him from entering upon and logging the timber on Parcel 2; and

(2) a deed from Blaylock to plaintiff of Parcel 2 and judgment that Parcel 2 belongs to plaintiff free of any liens; and

(3) reformation of Homestead Patent No. 822,606 to contain a corrected legal description of Parcel 1

Is Hereby Granted.

Plaintiff's prayer for alternative relief against

defendants Hyrum S. Sims, Edward E. Head, John H. Stevens, Harold Leever, and Iris Leever
Is Hereby Denied.

Plaintiff shall prepare findings of fact, and conclusions of law in accordance with this opinion.

Date: March 4th, 1958.

/s/ MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed March 4, 1958.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly for trial on December 2, 1957, before the Honorable Michael J. Roche, Chief Judge, presiding without a jury. Plaintiff appeared through its attorneys, Lloyd H. Burke, United States Attorney for the Northern District of California, and Bernard Petrie, Assistant United States Attorney for that District; defendant Joseph F. Blaylock appeared personally and through his attorney, Michael T. Hennessey; defendant Orleans Veneer and Lumber Co., a corporation, appeared through its attorneys, Huber and Goodwin represented by Norman C. Cissna; defendant Edward E. Head, doing business as the Head Lumber Company, appeared personally and through his attorney, William L. Ferdon; defendant John H. Stevens appeared personally and

through his attorney, Samuel R. Friedman; defendants Hyrum S. Sims and Guy Head defaulted; and defendants Harold Leever and Iris Leever, a partnership, doing business as Willamette Builders Supply, were not served with the complaint and summons.

Oral and documentary evidence was introduced by and on behalf of the respective parties, and oral argument was made by their attorneys at the conclusion of the trial. Thereafter, memoranda were submitted to the Court, and the cause was submitted on January 10, 1958.

The Court, being fully advised in the premises, made and entered an order on March 4, 1958, granting judgment for plaintiff upon its first claim denying plaintiff's alternative claims 2 through 5 and directing the preparation of the following:

Findings of Fact

1. This action was brought under 28 U.S.C. § 1345.

2. Prior to 1921 John Patterson occupied certain land (hereinafter called parcel 1) in the Klamath National Forest, Siskiyou County, California, as a homestead under number 02665 and applied for a patent for such land.

3. On September 13, 1921, plaintiff issued to John Patterson Homestead Patent number 822,606 which patent contained the following description intended by plaintiff, and believed by John Patterson, to cover parcel 1:

“Northeast quarter of the Northwest quarter,

the East half of the East half of the Northwest quarter of the Northwest quarter, the North half of the North half of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Northeast quarter of the Southwest quarter of the Northwest quarter of Section 34 in Township 13 North of Range 6 East of the Humboldt Meridian, California, containing 62.50 acres.”

4. The description contained in Homestead Patent number 822,606, because of mistake, did not cover parcel 1 but instead covered another parcel of land in the Klamath National Forest owned by plaintiff (hereinafter called parcel 2).

5. The true description of parcel 1 is as follows:

“From the quarter corner common to Section 20 and 29, Township 13 North, Range 6 East, Humboldt Meridian, South 66°09’ East from 8,038.96 feet, thence East 1,650 feet, thence North 1,650 feet, thence West 1,650 feet, and thence South 1,650 feet.”

6. Plaintiff has always been in possession of parcel 2, which parcel is virgin timber land.

7. In June, 1943, a deed was executed between the Tax Collector of Siskiyou County and the State of California which deed purported to transfer certain property to the State of California for non-payment of taxes and which deed contained the following description: “Homestead Entry #02655 in NW¼ Desig. Plat #4 Sec 34 Twp 13N R 6E HM Ditch and Water Right”.

8. In January, 1946, defendant Sims as a result

of a tax sale took a deed from the State of California with the following description: "H. E. #02655 Por. of NW $\frac{1}{4}$ (Ditch & Water Right) Section 34, Twp. 13 North, Range 6 East HM". Defendant Sims intended to buy parcel 1.

9. Thereafter defendant Sims actually occupied parcel 1; he never occupied parcel 2.

10. In 1952 defendant Sims had Albert Parrott, Surveyor for Siskiyou County, make a survey of parcel 1. According to that survey, parcel 1 lies in sections 27 and 28, instead of section 34, Township 13 North, Range 6 East, Humboldt Meridian.

11. Upon learning of the mistaken description in his documents of title, defendant Sims wrote to the Klamath Forest Supervisor on March 19, 1952, asking for advice about securing a proper legal description for parcel 1. The Klamath Forest Supervisor wrote to defendant Sims on July 23, 1952, recognizing Sims' rights to parcel 1, where Sims was living, permitting Sims to log timber from parcel 1 and stating that the Klamath Forest Supervisor would accept an amended patent description for parcel 1.

12. Thereafter in 1953, 1955 and 1956 defendant Sims caused parcel 1 to be logged. One of the men who logged parcel 1 in 1955 and 1956 was defendant Blaylock.

13. In July, 1956, defendant Sims conveyed his interest in parcel 1 to defendant Blaylock by quitclaim deed and also delivered to defendant Blaylock a grant deed containing the description contained in Homestead Patent number 822,606.

14. Prior to and when taking the two deeds from defendant Sims, defendant Blaylock knew of Sims' arrangement with the Forest Service under which Sims could log parcel 1 although he had documents of title for parcel 2 and not parcel 1. Before the transfer from Sims to Blaylock, Sims had given to Blaylock a copy of Parrott's survey map, which showed both the "location of Patterson patent and H. S. Sims as occupied previous to homestead patent and continuous to date" (parcel 1) and the "location of Patterson patent as per records 62.5 acres" (parcel 2). Also Sims had told Blaylock that Blaylock would not have any right to the timber on parcel 2.

15. In July, 1956, defendant Blaylock delivered to defendant Guy Head a deed of trust containing the description in Homestead Patent number 822,-606. That deed of trust has not been recorded while plaintiff did record a notice of the pendency of this suit.

16. On December 1, 1956, defendant Blaylock delivered to defendant Orleans Veneer and Lumber Co. an instrument purporting to assign his interest in the grant deed taken from defendant Sims.

17. Defendant Blaylock claimed ownership of, threatened to log and did start to log timber on parcel 2.

Conclusions of Law

1. This Court has jurisdiction of the subject matter and the parties under 28 U.S.C. § 1345.

2. Plaintiff was and is the owner of parcel 2, the description of which is as follows:

“Northeast quarter of the Northwest quarter, the East half of the East half of the Northwest quarter of the Northwest quarter, the North half of the North half of the Southeast quarter of the Northwest quarter and the Northeast quarter of the Northeast quarter of the Southwest quarter of the Northwest quarter of Section 34 in Township 13 North of Range 6 East of the Humboldt Meridian, California, containing 62.50 acres.”

3. Plaintiff is entitled to the reformation of Homestead Patent number 822,606 and subsequent documents of title to describe the land actually entered and occupied thereunder by John Patterson (parcel 1). The correct description of such land is:

“From the quarter corner common to Sections 20 and 29, Township 13 North, Range 6 East, H.M., South $60^{\circ} 09'$ E. for 8,038.96 feet, thence East 1,650 feet, thence North 1,650 feet, thence West 1,650 feet, thence South 1,650 feet.”

4. The State of California never had any jurisdiction to tax parcel 2. Neither the attempted transfer of parcel 2 to the State of California in 1943 for unpaid taxes nor Sims' taking of a deed covering parcel 2 at a tax sale in 1946 cut off plaintiff's equity of reformation.

5. Defendant Blaylock was not a bona fide purchaser when he took the grant deed covering parcel 2 from defendant Sims.

6. Defendant Orleans Veneer and Lumber Co., because it took merely an assignment from defendant Blaylock, did not secure any rights superior to

those of Blaylock. Furthermore, Blaylock's transfer to Orleans did not enable Orleans to cut off plaintiff's right of reformation because the origin of Orleans' claim is a tax deed defective for want of taxing jurisdiction.

7. By taking the deed of trust from defendant Blaylock, defendant Guy Head did not cut off plaintiff's equity of reformation because Guy Head did not record his deed while plaintiff did record a notice of the pendency of this suit.

8. The defense of laches may not be asserted against plaintiff.

Let judgment be entered accordingly.

Dated: March 27th, 1958.

/s/ MICHAEL J. ROCHE,
United States District Judge.

Certificate of Mailing attached.

[Endorsed]: Filed March 27, 1958.

In the United States District Court, Northern District of California, Southern Division

Civil No. 36569

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH F. BLAYLOCK; GUY HEAD; ORLEANS VENEER and LUMBER CO., a corporation; HYRUM S. SIMS; EDWARD E. HEAD, doing business as HEAD LUMBER COMPANY and as SISKIYOU MILLS, a partnership; JOHN H. STEVENS; and HAROLD LEEVERS and IRIS LEEVERS, a partnership, doing business as WILLAMETTE BUILDERS SUPPLY,

Defendants.

JUDGMENT

Findings of Fact and Conclusions of Law having been filed in this cause,

Wherefore, by reason of the law, the pleadings, and the premises contained in those Findings and Conclusions,

It Is Hereby Ordered, Adjudged and Decreed that:

1. Defendant Blaylock and his agents be restrained from entering upon and logging, cutting or defacing the timber on land described as follows:

Northeast quarter of the northwest quarter,
the east half of the east half of the northwest

quarter of the northwest quarter, the north half of the north half of the southeast quarter of the northwest quarter and the northeast quarter of the northeast quarter of the southwest quarter of the northwest quarter of Section thirty-four in Township thirteen north of Range six east of the Humboldt Meridian, California, containing sixty-two and fifty-hundredths acres.

2. Defendant Blaylock shall deliver to plaintiff within 10 days a deed covering such land.

3. Homestead Patent number 822,606 and subsequent documents of title be hereby reformed to contain the following description as the correct description of the land homesteaded and patented:

From the quarter corner common to sections 20 and 29, Township 13 North, Range 6 East, Humboldt Meridian, South 66 degrees 09 minutes east for 8,038.96 feet, thence east 1,650 feet, thence north 1,650 feet, thence west 1,650 feet and thence south 1,650 feet.

4. Plaintiff is the owner of the land described in subparagraph (1) hereof free of any liens whatever, including but not limited to, any claims of defendants Blaylock, Orleans Veneer and Lumber Co. and/or Guy Head.

5. Plaintiff take nothing by its complaint from defendants Hyrum S. Sims, Edward E. Head, John H. Stevens or Harold and Iris Leever.

It Is Further Ordered, Adjudged and Decreed that plaintiff do have and recover from defendants Blaylock and Orleans Veneer and Lumber

Co., jointly and severally, its costs of suit in the amount of \$359.51, to be taxed by the Clerk of this Court and paid for forthwith by such defendants.

Dated March 27th, 1958.

/s/ MICHAEL J. ROCHE,
United States District Judge.

Entered in Civil Docket March 28, 1958.

Certificate of Mailing attached.

[Endorsed]: Filed March 27, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the above entitled Court:

You will please take notice that Joseph F. Blaylock, one of the defendants in the above entitled action hereby appeals to the United States Court of Appeals for the Ninth Circuit from that portion of the judgment of the above entitled court entered March 28, 1958 which affects the said defendant Joseph F. Blaylock as follows: Paragraphs 1, 2, 3 and 4 of such judgment together with that portion of such judgment which awards costs of suit against defendant Joseph F. Blaylock.

Dated this 16 day of May, 1958.

BURTON & HENNESSY,
/s/ By MICHAEL T. HENNESSY,

Attorneys for Defendant Joseph F.
Blaylock.

[Endorsed]: Filed May 19, 1958.

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men By These Presents: That we, Joseph F. Blaylock as principal and Donald D. Tilley as surety are held and firmly bound to the United States of America in the sum of Two Hundred and Fifty Dollars lawful money of the United States to be paid to the United States of America; for which payment shall be made in the event that the above entitled court or the United States Circuit Court of Appeals for the Ninth Circuit shall order recovery of costs on the appeal taken in the above action by Joseph F. Blaylock; and that said persons for himself, his heirs, executors and administrators, jointly and severally agree to be held by this bond.

Now, Therefore, if the above entitled Court or the United States Court of Appeals for the Ninth Circuit shall award costs on appeal to the United States, such parties shall be obligated under this bond to pay such sum not exceeding the sum of Two Hundred and Fifty Dollars, but if such courts shall not order the payment of such costs after the conclusion of this appeal this bond shall become void.

/s/ JOSEPH F. BLAYLOCK,
Principal,

/s/ DONALD D. TILLEY,
Surety.

State of California,
County of Siskiyou—ss.

Donald D. Tilley being first duly sworn deposes and says:

That he is the surety named in the above bond and that he is a freeholder and resident of the State of California and has a net worth in excess of the sum of Ten Thousand Dollars, over and above all his just debts and liabilities, exclusive of property exempt from execution; that further said person is the owner of real property with reasonable market value in excess of Six Thousand Dollars.

/s/ DONALD D. TILLEY

Subscribed and sworn to before me this 15 day of May, 1958.

[Seal] /s/ MICHAEL T. HENNESSY,
Notary Public in and for the County of Siskiyou,
State of California.

[Endorsed]: Filed May 19, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Orleans Veneer and Lumber Co., a corporation, one of the Defendants above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that portion of the final judgment entered in this action

on March 28, 1958 which effects the said Defendant Orleans Veneer and Lumber Co., a corporation, as follows: Paragraphs 1, 2, 3 and 4 of such judgment, together with that portion of such judgment which awards costs of suit against Defendant Orleans Veneer and Lumber Co.

Dated: This 23 day of May, 1958.

HUBER & GOODWIN,
/s/ By NORMAN C. CISSNA,

Attorneys for Appellant Orleans
Veneer and Lumber Co.

[Endorsed]: Filed May 27, 1958.

[Title of District Court and Cause.]

POINTS ON APPEAL

Pursuant to Rule 75 (d) defendant-appellant Orleans Veneer and Lumber Co. intends to rely upon the following points on appeal.

(a) That the State of California was a bona fide purchaser for value of the land sought to be reformed and therefore any subsequent sale by the State of California cuts off the United States' right to reformation.

(b) That the purchase by H. S. Sims from the State of California of the patent sought to be reformed was a sale to a bona fide purchaser for value and therefore cut off the equities of the United States to the right of reformation.

(c) That the State of California has a right to rely on the regularity of patents issued by the United States and does have a right and jurisdiction to tax lands covered by patents issued by the United States.

(d) That a tax sale regularly held pursuant to California law eliminates all equities of all predecessors in interest to the defaulting tax payer and all lien holders of the defaulting tax payer including the right of the United States to procure a reformation of the original patent.

(e) That Orleans Veneer and Lumber Co. is a bona fide mortgagee protected by the recording laws of the State of California.

(f) That if the United States government has a right of reformation, it is subject to California Civil Code Section 3399, and reformation may not prejudice the rights acquired by a third party, in good faith and for value. That Orleans Veneer and Lumber Co. is the holder of rights acquired in good faith and for value.

Dated: This 9th day of June, 1958.

HUBER & GOODWIN,
/s/ By NORMAN C. CISSNA,

Attorneys for Defendant-Appellant
Orleans Veneer and Lumber Co.

[Endorsed]: Filed June 10, 1958.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by Counsel:

Excerpts from Docket Entries.

Complaint.

Affidavit of Henry Erhart.

Order to Show Cause and Temporary Restraining Order.

Stipulation and Order Amplifying Restraining Order.

Answer of Joseph F. Blaylock.

Order Granting Continuance of Temporary Restraining Order.

Consent to Filed Amended Complaint.

Amended Complaint.

Answer of Joseph F. Blaylock to Amended Complaint.

Answer of Orleans Veneer and Lumber Co. to Amended Complaint.

Proposed Findings and Conclusions by Joseph F. Blaylock.

Order Granting Preliminary Injunction, Findings of Fact and Conclusions of Law.

Memorandum Opinion of Court.

Findings of Fact and Conclusions of Law.

Judgment.

Notice of Appeal of Joseph F. Blaylock.

Appeal Bond of Joseph F. Blaylock.

Designation of Record on Appeal by Joseph F. Blaylock.

Notice of Appeal by Orleans Veneer and Lumber Co.

Appeal Bond of Orleans Veneer and Lumber Co.

Points of Orleans Veneer and Lumber Co. in Appeal.

Appellee's Designation of Record on Appeal.

Reporter's Transcript of Proceedings.

Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11-A, 11-B, 11-C, 11-D, 12, 13, 13-A, 14, and 15.

Defendants' Exhibits A, B, C-1, C-2, C-3, C-4, D-1, D-2, E-1, E-2, E-3, E-4, F, G, H, I, J, K, L, M, N, and O.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 8th day of July, 1958.

[Seal]

C. W. CALBREATH,
Clerk,

/s/ By MARGARET P. BLAIR,
Deputy Clerk.

[Title of District Court and Cause.]

PROCEEDINGS OF TRIAL

December 2, 3, 4, 1957

Before: Hon. Michael J. Roche, Judge.

Appearances: For the Government: Lloyd H. Burke, U. S. Attorney, by Bernard Petrie, Asst.

U. S. Attorney. For Defendant Blaylock: Burton, Lee & Hennessy, by Michael T. Hennessy, Esq. For Defendant Stevens: Samuel R. Friedman, Esq. For Defendant Orleans Veneer & Lumber Co.: Huber & Goodwin, by Norman Cissna, Esq. For Defendant Head: William L. Ferdon, Esq. [1*]

* * * * *

Mr. Hennessy: May we also stipulate at this time that in regard to Exhibits No. 2 and No. 3, that is the conveyance of real estate in Section 34 to the State of California, and the conveyance of right by the State of California to Hyrum Sims (Figure 1) that the taxing procedures were regular, and (2) [10] that the State of California had no knowledge at either time of any misdescription of any patent.

Mr. Petrie: So stipulated, Your Honor. [11]

* * * * *

FREDERICK P. WILDER

Called as a witness by the Government, being first duly sworn, was thereupon examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Petrie): How long have you been employed by the Forest Service, Mr. Wilder?

A. Since 1929.

Q. What were the places of your employment?

A. All in the Klamath National Forest, at Or-

* Page numbers appearing at top of page of Reporter's Transcript of Record.

(Testimony of Frederick P. Wilder.)

leans and Yreka District with headquarters at Oak Knoll and at Happy Camp.

Q. How long have you lived in the Klamath River area? A. Born there.

Q. You have lived there all your life?

A. Practically, except for eight or ten years.

Q. Did you ever know John Patterson? [39]

A. Yes; not very well, but he was well known in the area.

Q. Did you know any of his family?

A. Yes, I knew the boys quite well, used to play ball against them and with them.

Q. How many boys were there?

A. There were two that I remember.

Q. What are their names, if you remember?

A. Well, Johnny, and I don't know if I remember the other boy; he was younger. I think it was Louie, but I am not sure.

Q. Do you know where the family lived?

A. Yes.

Q. Where did they live?

A. They lived on this homestead up from the river road, had to go there by trail.

Q. Did you ever visit that homestead when the Patterson family was living there?

A. Yes, I have.

Q. In what year or years, as best you can place it now?

A. It was after I went to work for the Forest Service in 1929.

Q. When was that?

A. In 1929. But I don't remember what par-

(Testimony of Frederick P. Wilder.)

ticular times. The trail through their homestead gave access to the back country, the primitive area. That was a regular Forest Service trail.

Q. How many times were you on the old Patterson property? [40]

A. I couldn't say, possibly a half dozen times I have been through there.

Q. Do you know Hyrum S. Sims?

A. Yes.

Q. Was there ever a time, to your knowledge, that Mr. Sims was living in this area?

A. Oh, yes.

Q. What land did he occupy?

A. What we called the Patterson place.

Q. Did Mr. Sims occupy the same property that was occupied by John Patterson and his family?

A. That's right.

Q. Did you visit the property while Mr. Sims was living there? A. Yes.

Q. How many times?

A. Oh, I couldn't say exactly; several times, and usually in the course of official duty.

Mr. Petrie: No further questions. [41]

* * * * *

HYRUM SMITH SIMS

Called as a witness by the Government, being first duly sworn, testified as follows: [45]

* * * * *

Direct Examination * * * * *

Q. (By Mr. Petrie): Did you at one time live in Northern California off the Klamath River?

(Testimony of Hyrum Smith Sims.)

A. Yes, sir, I did.

Q. When was that, Mr. Sims?

A. I moved there in 1946.

Q. How did you acquire the property upon which you lived there?

A. I bought it from a tax sale.

Q. Do you remember the price that you paid for the property? A. \$450.00.

Q. Did you buy that property in 1946?

A. Yes, sir, that is—it was '47 at the time I got it, advertised, and the tax sale came up.

Q. Before you bought the property, Mr. Sims, did you inspect the property that you were going to buy? A. Yes, I did.

Q. Did the place that you bought have a name, or was it just a piece of property?

A. Well, it's called the Patterson place.

Q. For how long did you live on that property?

A. I will have to think.

Q. Perhaps I can put the question this way, Mr. Sims: You have sold that property, have you not? [47] A. Yes, I have.

Q. When did you sell it?

A. In July, 1956.

Q. Did you live on the property continually while you held it?

A. No, I didn't, I didn't move up there until about '51, I guess.

Q. Where were you living before 1951?

A. John Skimball's (?) place down on the river.

(Testimony of Hyrum Smith Sims.)

Q. How far is that from the old Patterson place? A. About five miles.

Q. And then you moved to the Patterson place in 1951, is that correct? A. That's correct.

Q. Did you live there then continually until you sold it in 1956?

A. Only when I was to the hospital, yes.

Q. What buildings were on the property when you bought it? A. The log house.

Q. Were there any other buildings?

A. There were some sheds I had to burn down.

Q. Of what did the log house consist?

A. Well, at that time, two rooms upstairs, attic.

Q. Were there any other buildings on the property?

A. I told you, the shed I had to burn down.

Q. Just those. Was there any clearing on the property?

A. Yes, meadow, about five acres, I would judge.

Q. Did you make any improvements on the buildings? A. Yes, I did.

Q. What did you do, Mr. Sims?

A. Well, for example, we had to rebuild the whole thing. I put in new floors, and we had to put in a partition, and plaster board, or whatever you call it, in the bedroom, and we put in knotty pine in the living room, and we built a kitchen and toilet and hallway on it extra.

Q. Did you put up any other buildings on the property? A. Yes, we did.

Q. What did you put up?

(Testimony of Hyrum Smith Sims.)

A. There was a double garage, or, rather, garage and a bulldozer shed, and wash house, and a chicken coop and chicken run.

Q. Did there come a time in 1952 or before that when you decided to log the property?

A. Yes, there did.

Q. Did there come a time when you hired Mr. Perry, the County Surveyor, Siskiyou County, to survey the property for you?

A. That is right.

Q. When was that, Mr. Sims?

A. It must have been '52, maybe '53, I guess.

Q. Well, when Mr. Parrott made that survey for you what information did he give you? [49]

A. Well, he just surveyed to the first corner and said that I wasn't on the property that I had the deed for.

Q. And did you, after getting that information, write a letter to the Forest Service about it?

A. I did. [50]

* * * * *

Q. At the time you were talking to Mr. Blaylock you had these three letters from the Forest Service in your possession, did you not?

A. I'm not right sure. Now, I didn't have them right then at the first time.

Q. You mean the first time that you talked to Mr. Blaylock about them?

A. No, Mr. Stevens had them.

Q. Well, at any time during your negotiations

(Testimony of Hyrum Smith Sims.)

with Mr. Blaylock did you have those letters in your possession?

A. Yes. I got them before he bought.

Q. Pardon?

A. I got them before he bought it.

The Court: Do I understand the originals of these letters are available? [67]

A. Yes, sir.

The Court: Where are they?

A. Meadow Vista, my home.

The Court: Will you have any difficulty in producing them at the proper time?

A. Well, no, if I could send someone up there.

The Court: Well, just so they are available, that's all I want to know now.

Mr. Petrie: Did your Honor ask about the original deed to Mr. Sims?

The Court: The letters.

Mr. Petrie: Oh, the letters. I don't think there will be any dispute about the language of the letters, your Honor.

The Court: Very well, proceed.

Mr. Petrie: Q. Did you ever show those three letters, or any of them, to Mr. Blaylock?

A. Yes, I did.

Q. Did you show some or all of them to him?

A. All of them.

Q. And that was before he bought the property from you, is that right?

(Testimony of Hyrum Smith Sims.)

A. Before it was paid. Not when he got the option but before it was paid for.

Q. Before you closed the deal?

A. Yes. [68]

* * * * *

Q. Now, when Mr. Parrott made the survey, Mr. Sims, did he give you a map of the survey?

A. Yes, he did.

Q. Did you at any time give that map to Mr. Blaylock? A. Yes, I did.

Q. When did you do that, sir? Was that before or after the transaction was closed?

A. Before he bought it. [69]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Hennessy): Now, Mr. Sims, going back, first of all, to 1946, I believe you say that was when you acquired the property, acquired Section 34?

A. I am not positive if I acquired it then, or that I advertised it.

Q. I see.

A. Whether it was in '47——

It might have been '47 when I finally got it. [74]

Q. Well, in any event, did you ask for this property to be up for sale, or did you——

A. That's right.

Q. And so you asked that this property in Section 34 be put up for sale?

A. That is right.

Q. And the property you bought, the legally ad-

(Testimony of Hyrum Smith Sims.)

vertised property, was the property in Section 34, wasn't it?

A. Well, it's the deed I got.

Q. That's the deed you got. And no one from the tax office—no representative of the State of California—went out on the land with you, did they?

A. No, they didn't. [75]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Ferdon): Well, Mr. Sims, isn't it correct that in all your dealings with the Government you referred to 27 and 28 as your place, the place you developed, "My place", isn't that right?

A. No, I don't think so. That's the only one I had done any work on at all.

Q. You wrote to them, did you not, as the letter states in Plaintiff's Exhibit D:

"About five years ago I obtained a parcel of land amounting to 62½ acres in the Klamath Forest. This was through a tax sale by Siskiyou County. The land was advertised according to law, and sold to me as the highest bidder. Since then I have resided continually on same and have made my home there. This land was homesteaded by John Patterson in 1921 and lies in Section 34, Township 13 North—R 6 E, Siskiyou County."

So you always referred, did you not, in the dealings to the land on which you resided, isn't that correct?

A. That's correct, until I had to get a deed in order to sell it.

(Testimony of Hyrum Smith Sims.)

Q. And, Mr. Sims, you never resided at any time on Section 34, did you?

A. No, I did not. [86]

* * * * *

JOSEPH FRANCIS BLAYLOCK

called as a witness under the Federal Rule of Civil Procedure 43b, first having been duly sworn, testified as follows:

* * * * *

Direct Examination

Mr. Petrie: Q. How long have you been a logger, [145] Mr. Blaylock?

A. For the last four years.

Q. From 1953 to 1957?

A. I think it was in 1953 that I first started logging.

Q. What was your occupation from 1951 to 1953 in Happy Camp?

A. Falling and bucking timber, contracting.

* * * * * [146]

Q. Now, where were you standing when you had this discussion with Mr. Sims with reference to the land that Mr. Sims was occupying? Were you near the house, were you on one of the borders; where were you on the land?

A. I would say that we were approximately middle ways of the land and close to the east border of the land.

Q. Close to the east border of the land?

A. Yes, sir.

(Testimony of Joseph Francis Blaylock.)

Q. And you said you were looking out on the Forest Service timber at the time that you made these remarks to Mr. Sims, is that correct?

A. That is correct.

Q. Were you looking at any particular direction? Were you looking east or were you looking south?

A. It would be east that I was looking.

Q. You were looking east? [152]

A. Yes, sir.

Q. And as far as you could see and as far as you knew, that was all Forest Service timber, isn't that so?

A. Yes, sir, that is true. [153]

* * * * *

Q. What kind of a land did you find when you made your inspection?

A. Well, I found it to be the same general terrain in the area of Happy Camp. It was timbered and had ravines.

Q. Was it heavily timbered?

A. Portions of it were heavily timbered and some of it weren't so heavy.

Q. Did you estimate how much timber there was on the land?

A. No, sir, I didn't at that time because I didn't cover enough of it or walk through enough of it that I figured I could get a very accurate estimation of it.

Q. Did you notice what kind of timber was on it?

(Testimony of Joseph Francis Blaylock.)

A. Yes, sir, I noticed mostly Douglas fir.

Q. And some pine? [158]

A. Pine, and there was some firs.

Q. Did you see any buildings on that land?

A. No, sir, I did not.

Q. Did you see any evidence of cultivation at all?

A. No, sir, I did not.

Q. Did you see any notice of a mining claim posted?

A. No, sir. [159]

* * * * *

Mr. Petri: Q. Mr. Blaylock, did there come a time in December of 1956 when you got some money from the Orleans Veneer and Lumber Company?

A. There did.

Q. When did you start your negotiations with the company to get that money?

A. I think that was in the early part of October.

Q. What representative of the company did you see? [186]

A. I contacted Mr. Gene Young.

Q. Who is he?

A. As far as I know, he is the timber cruiser for the Orleans Veneer Lumber Company.

Q. Where did you contact him?

A. I contacted him at Orleans.

Q. Did you go with him to inspect the land in Section 34?

A. No, sir, I did not.

Q. Did you tell him about the land in Section 34?

A. Yes, sir, I did.

Q. And what was the purpose of your contacting him?

(Testimony of Joseph Francis Blaylock.)

A. I wanted to give them a consignment.

Q. Of what?

A. On the timber in Section 34 that I had purchased from Mr. Sims.

Q. And did you eventually give them a consignment of the timber?

A. Yes, sir, I did.

Q. When did you do that?

A. That was in the early part of December, it was.

Q. And did you, before you gave him that consignment, enter into an agreement with the Orleans Veneer and Lumber Company to deliver logs to that company?

A. At the time I gave him a consignment on it, we entered into an agreement, yes, sir. [187]

Q. Did you enter into an agreement at the time you gave him the consignment or before you gave him the consignment?

A. At the time I gave him that consignment.

Mr. Petrie: I ask that this agreement, your Honor, be marked Plaintiff's Exhibit No. 15 for identification.

The Clerk: Exhibit 15 marked for identification.

(The agreement was received and marked Plaintiff's Exhibit 15 for identification.)

Mr. Petrie: Q. Mr. Blaylock, I show you Plaintiff's Exhibit 15 for identification and ask you if that isn't your copy of the agreement you entered into with the Orleans Company? Isn't that the document that you identified at your deposition, Mr.

(Testimony of Joseph Francis Blaylock.)

Blaylock, and that was marked Plaintiff's Exhibit 6 and attached to your deposition?

A. That is the agreement that—that is your copy of the agreement.

Q. That is a copy of the agreement you executed with the company, is it not? A. Yes, sir.

Q. What was the substance of that agreement, Mr. Blaylock? How much money were you to get from the company? A. \$9,000.

Q. Did you get \$9,000 from the company?

A. Yes, sir, I did. [188]

Q. And in return, what was your agreement?

A. I was to deliver them any and all merchantable timber in land Section 34.

Q. For what price?

A. Forty dollars per thousand.

Q. Delivered at Orleans?

A. Delivered at Orleans.

Q. Now, in addition to your contact with Mr. Gene Young, did you have any contact with anyone else representing the Orleans Company?

A. Yes, sir, I did.

Q. With whom? A. Mr. Bill Strauser.

Q. And that is the Mr. Strauser that is in the courtroom? A. Yes, it is.

Q. And Mr. Young is also in the courtroom?

A. Yes, sir.

Q. Where did you meet with Mr. Strauser?

A. At the Arcata Plywood Corporation in——

Q. In Arcata?

A. In Arcata, California, yes, sir.

(Testimony of Joseph Francis Blaylock.)

Q. And did Mr. Strauser ask you for some evidence of your ownership of that timber?

A. He did.

Q. And what evidence did you give to him?

A. My deed to cover the property and title insurance.

Q. By "deed" you mean the deed you got from Mr. Sims? A. Yes, sir.

Q. Did you show any other evidence to Mr. Strauser?

A. That is all the evidence of ownership I had to show.

Q. I believe you said at the same time that you executed a consignment on it or an assignment. What was the purpose of that consignment or assignment, Mr. Blaylock?

A. To make payments on my monthly obligation and carry me through the winter months.

Q. That was a security instrument, was it not?

A. I don't understand.

Q. Mr. Blaylock, I show you Plaintiff's Exhibit 8 which purports to be an assignment from you to the Orleans Veneer Lumber Company. Is that a copy of the assignment that you gave the company as security for the repayment of the \$9,000?

A. Yes, sir, it is.

Q. It is? And did you intend by this assignment to give security interest in the timber and the land or just in the timber on the land?

A. Just in the timber.

Q. Now, Mr. Blaylock, after you got the letter

(Testimony of Joseph Francis Blaylock.)
from Mr. Sims in the spring of this year and took it to your counsel, when did you next see Mr. Sims?

A. The day we came down here for the hearings, for the preliminary [190] injunction.

Q. Did you have any contact by phone with him in the meantime?

A. No, sir, I didn't. [191]

* * * * *

CHARLES E. YOUNG

called as a witness on behalf of Defendant Orleans Veneer & Lumber Company, being first duly sworn, testified as follows:

The Court: What is your full name, please?

The Witness: Charles Eugene Young.

The Court: Charles, you sit right down there and remember that the reporter must take down what you say.

The Witness: I don't hear very well.

The Court: That's all right. Your full name now is what?

The Witness: Charles Eugene Young.

The Court: Y-o-u-n-g?

The Witness: Yes, sir.

The Court: Where do you live?

The Witness: Orleans, California.

The Court: Where?

The Witness: Orleans.

The Court: Orleans. And your business or occupation?

(Testimony of Charles E. Young.)

The Witness: I am a logging engineer and timber cruiser.

The Court: How long have you been so engaged?

The Witness: I have been born in the business, your Honor. I would say I was actively in the business for 24 years. [245]

The Court: Take the witness.

Direct Examination

Q. (By Mr. Cissna): Mr. Young, are you generally acquainted with the property in Section 34 which has been under discussion here?

A. Yes.

Q. Do you know its location?

A. Yes, sir.

Q. When did you first become acquainted with that property and under what circumstances?

A. Two gentlemen by the name of Cookman and Starritt—they have a small logging operation; I mean they are contractors, small operators—approached me and asked me to inspect the property and look it over, as they wanted to buy the timber, and they further stated that they wished to borrow the money from us.

Q. Now, when you say “us” will you explain who “us” is?

A. Orleans Veneer & Lumber Company.

Q. And you are an employee of the Orleans Veneer & Lumber Co.?

A. Yes, sir.

Q. In what capacity?

A. Logging Engineer and Timber Cruiser.

(Testimony of Charles E. Young.)

Q. What did they ask you to do? When was this, if you know?

A. I believe I stated the exact date in my deposition. I can't quite remember it now. I think it was in October. [246]

The Court: The year?

The Witness: 1956.

Mr. Cissna: Q. And what was their desire, Mr. Young?

A. They wished me to inspect the property and to make my recommendation to the Company for which I work as to whether they would be eligible for a loan on the timber, or possibly we might buy the timber and let them log it.

Q. And did you then inspect the timber with them, or alone? A. Yes, I did.

Q. And when was that, approximately?

A. I think it was on November 5th. I think that was the exact date. I took this from my reports that I made to the company.

Q. Did you write a report to the company on such an inspection?

A. Yes, I certainly did.

Q. I show you a general report dated November 5, 1956, which is marked Defendant's Exhibit 1 in your deposition. I will ask you if that is a photocopy of the general report that you made to your company. A. Yes, it is.

Q. And that refreshes your recollection in this matter? A. Yes, sir.

Q. What did you find when you examined the

(Testimony of Charles E. Young.)

property, or what did you do first in examining the property?

A. Well, it is customary in our business that the first thing—my [247] main job is to locate the proper location of the timber. If I receive a good legal description of it I generally make it my business to locate it as closely as possible, and then I determine the value of the timber, logging conditions, how much road should be built, and also I make an estimate of the expense in logging to see whether it would interest our company and whether the deal has merit. Then I proceed to go on with the work.

Q. How did you locate this property?

A. Well, the corner—they had a map.

Q. Yes. Now, with reference to a map, at the time of your deposition, Mr. Young, Mr. Petrie showed you a copy of a map at the time your deposition was taken: Is that right? You were shown a copy of your map, were you not, sir?

A. Yes, sir.

Q. Did you identify that as the map that you saw?

A. Yes, sir, except for one thing: It wasn't as good a map as I had.

Q. In other words, it wasn't the exact piece of paper that you saw? A. No, sir.

Q. But it was similar in nature; is that correct?

A. Yes, sir.

Q. Was the map that you saw the map which

(Testimony of Charles E. Young.)

has been identified as Plaintiff's Exhibit 10 which was given by Mr. Sims to Mr. [248] Blaylock?

A. Yes, but it wasn't in that good a condition.

Q. In other words, the exact piece of paper you saw was not this piece of paper, either?

A. No, sir.

Q. This was a map had by Mr. Cookman and Mr. Starritt; is that right? A. Yes, sir.

Q. Did you examine that map, Mr. Young?

A. Yes.

Q. Now, when you say it wasn't in that good a condition, what was the condition? What was the nature of your map?

A. Well, the printing on it was very dull. It was a poor print. It was the type of blueprint that is usually used in the business, but some of the writing was not too clear on it. However, it did show the locations, the section, and also Mr. Parrott's signature on it, the fact that he had done the work which made it good enough for me, anyway, and it also showed where he started his survey.

Q. And from that map you were able to locate approximately the position of the property in Section 34?

A. I located Mr. Parrott's work and due to his reputation and—where he started from, which corner I am very well acquainted with, and I know it is the only corner, why, it convinced me that I was in Section 34. [249]

Q. In other words, you examined his actual survey on the ground? A. Yes, sir.

(Testimony of Charles E. Young.)

Q. Did you examine that property?

A. I did.

Q. What did you find?

A. I didn't make my usual thorough examination or, we will say, a complete cruise. It was snowing. The weather was bad. However, I located all the boundaries, all the corners on the property that Mr. Parrott had established, and I made two runs through the timber. I divided the block into an equal two parts and as I went through with a compass, I looked on either side of me, 66 feet.

Q. All right.

A. And I took a rough estimate of what was in there. I have been logging all my life, and also due to tree counting, I estimated the volume. I kept it to myself. I didn't say much. I also established the fact that there had been considerable survey work done there, and the corners were in with the markers.

Q. Were Messrs. Cookman and Starritt with you at that time? A. Yes.

Q. Did you have any further conversation with regard to their request for advance money to eventually buy this?

A. Well, as I stated in my deposition, I knew that they didn't own it, and I also knew they needed money.

Q. How did you know they didn't own it? [250]

A. I asked him.

Q. And what did they tell you?

(Testimony of Charles E. Young.)

A. They told me it was owned by a man by the name of Blaylock.

Q. Now, you say you made a report to your company regarding this? A. Yes.

Q. And the exhibit that you are holding is a copy of the report that you made to your company?

A. That's my first report.

Mr. Cissna: If I may, your Honor, I will have this placed in evidence at this time.

Mr. Petrie: Isn't the original attached to the deposition? Wait a minute. Let me see. No, sir, I have the original here.

Mr. Cissna: May it please the Court, Mr. Petrie has substituted the original of that document, which I am perfectly willing to accept.

The Court: Very well. It may be admitted and marked.

The Clerk: Defendant's Exhibit J.

(Original report made by Mr. Young to his company marked Defendant Orleans Exhibit J in evidence.) [251]

* * * * *

Mr. Cissna: Q. This is the report which you wrote to your office? A. That's right.

Q. Would you identify L. Rochlin and A. Rochlin?

A. L. Rochlin is the General Manager of Orleans Veneer & Lumber Co.

Q. And A. Rochlin?

A. He is also one of the members of the firm.

Q. He is a stockholder in that corporation?

(Testimony of Charles E. Young.)

A. That's right.

Q. E. W. Strauser?

A. He is our Controller.

Q. He is present in Court, sir, is he?

A. Yes, sir.

Q. And how about B. Barrett?

A. He is the timber manager.

Q. This letter was called to your attention by Cecil Yardley. Could you identify him?

A. He was a former employee of ours. He was our local man at Orleans that took care of the logs.

Q. Following the making of this report did you do anything else to investigate this matter?

A. No, I didn't do too much. My job was to determine [255] whether the timber was there. I had another job going at the time. I do lots of this work. I made my report and went on about my business.

Q. Did you make any deal or agreement with Cookman and Starritt regarding this property?

A. I told them, as I stated in my deposition, if I can remember right, that in order that we be interested—I made certain stipulations. The first thing was that we had to have definite proof of ownership of the land of whoever we were dealing with and that we would have to have security and that it would be entirely up to our principals in the town, our Controller, and my boss; that they would decide whether they would act on my recommendations. But I did stipulate that we must have a bona fide deed and something legal.

Q. Did they advise you they had such a deed?

(Testimony of Charles E. Young.)

A. They did. No, they told me they could produce one.

Q. Whose deed was that?

A. Blaylock's.

Q. Did they produce such a deed for you?

A. I didn't see it until later.

Q. But it wasn't produced for you?

A. No.

Q. Subsequent to that transaction did you have any conversations with anyone relating to the property in Section 34?

A. Would you repeat that? [256]

Q. Did you have any conversations with Cookman or Starritt, or with anyone else relating to the property in Section 34? A. Later I did.

Q. Who was that with?

A. Mr. Blaylock.

Q. And when was that?

A. About a week later.

Q. Where was it?

A. It was about November 12th or the 13th.

Q. Who was present?

A. I think he just contacted me alone. He came up to my job where I was building a road.

Q. What was the nature of that conversation? Would you relate it to us, please?

A. Well, he told me that he wanted to sell the timber or possibly sell it to us so that he could get a logging job. He would stipulate that—he said that if we bought the timber, he would log it at a fair price, and I told him at that time that my

(Testimony of Charles E. Young.)

recommendations had gone into town; that I had nothing more to do with it, and I would be glad to help him in any other way, but he would have to go to town. I didn't give it any more thought. It was just a routine matter to me.

Q. You told him you had already looked at this property?

A. Oh, yes. I told him at the time that I didn't think there was the volume in there that he claimed.

Q. Did you make any further report to your company or any members [257] of your company?

A. There was one more letter to it, I don't remember the date. If I could see it——

Q. Showing you a letter of November 12, 1956, from Orleans, California, a letter addressed to "Bill" from "Gene", is this the report that you are referring to?

The Court: What about this letter?

The Witness: This is an informal letter. It is an inter-office letter. "Bill" is William Strauser. Yes, I remember it.

Mr. Cissna: Q. And you wrote this letter?

A. Yes.

Q. Or dictated it?

A. I wrote the letter, yes.

Mr. Cissna: I will ask that this letter be introduced into evidence.

Mr. Petrie: I object to it as being irrelevant.

The Court: Well, I don't know its contents.

Mr. Cissna: Well, may it be marked for identification?

(Testimony of Charles E. Young.)

The Court: And again if the purpose of the offer is on the issue of good faith of the Orleans Company, then you will have no objection?

I take it that is all you expect it to prove, is it?

Mr. Cissna: That is all I expect to prove, yes, your Honor. [258]

The Court: Well, I am glad to hear that.

It may be so marked.

The Clerk: Defendant's Exhibit K.

(The letter referred to dated Nov. 12, 1956, to "Bill" from "Gene" marked Defendant Orleans Exhibit K for identification.) [259]

* * * * *

Q. Following this letter did you prepare such an agreement or have such an agreement prepared?

A. I did not. That was done in town.

Q. Did you have any further discussions with Mr. Blaylock?

A. As I recall, he didn't make it in on that Saturday, and [260] I think the office in town did prepare an agreement. I did not hear from him for quite some time, and finally I did. As I stated in my deposition, I stated I didn't see him when he was in town, but I remember they refreshed my memory and I do remember that I was in the office on the week end in Arcata. Mr. Strauser was there, and I was called in to give an opinion on the matter regarding the contract.

Q. And that opinion regarded what portion of the contract?

A. I think he wanted \$9000 there.

(Testimony of Charles E. Young.)

Q. Rather than the \$7000?

A. Yes. Mr. Strauser asked me whether I thought there was enough timber there to justify the additional \$2000, and I stated that there was.

Q. Did you at any time in talking to Cookman & Starritt or Mr. Blaylock know of any mis-description of property?

A. No. I was told to find Section 34 and the property described therein, and I did.

Mr. Cissna: That is all.

The Court: Court is adjourned until 2:00 o'clock.

(Whereupon at 12:05 p.m. a recess was taken until 2:00 o'clock p.m. of the same day.) [261]

* * * * *

Cross Examination * * * * *

Q. (By Mr. Petrie): Now, you said, Mr. Young, that you talked to Mr. Cecil Yardley first about this possible deal with Cookman and Starritt?

A. That's right.

Q. Can you fix the time approximately with reference to when your reports were made?

A. It was about two weeks before I made the inspection.

Q. Mr. Yardley was then working for the Orleans Company, was he not? A. Yes, sir.

Q. In what capacity?

A. He was the log buyer.

Q. Well, what did Mr. Yardley tell you?

A. He told me that he—that he had a piece of timber, and he wanted my opinion on it, and he wanted me to help him locate it, and make sure he

(Testimony of Charles E. Young.)

was on the right piece of ground. That's the reason I went with him.

Q. Did Mr. Yardley tell you it was a mining claim? A. Yes. [268]

Q. Did he tell you anything else?

A. That's all he told me. He said he didn't know much about it. We just went out on what we call a "Cold turkey deal."

Q. Did he tell you how he found out it was a mining claim?

A. No, he didn't tell me.

Q. Did Mr. Yardley indicate to you through any papers that he had about the ownership to that property?

A. No, not that I can remember.

Q. And after that discussion with Mr. Yardley, you then met with Mr. Cookman and Mr. Starritt; is that right? A. That's right.

Q. And you went with Mr. Cookman and Mr. Starritt to inspect the property for the first time?

A. Right.

Q. Before your inspection of the property, or perhaps during it, if you will tell us which, Mr. Cookman and Mr. Starritt showed you a survey map of the area; is that correct?

A. That's right. It was a map prepared by Mr. Parrott.

Q. Mr. Parrott?

A. Yes, a copy of the original.

Q. And you have testified that the writing or the printing, the lettering on that map, was not as

(Testimony of Charles E. Young.)

good as it is on Plaintiff's Exhibit 10? Was that your testimony, Mr. Young?

A. Yes, sir. This part in here was not discernible.

Q. And by "this part" you are referring to the language [269] appearing on the map in Sections 27 and 28?

A. Yes, in this over here. The description of the corner was not clear. I had a hard time deciphering it. I could barely see that.

Q. Could you make out any of the language on the map that you saw? A. Yes.

Q. How much did you make out?

A. Oh, enough to know—I made enough out of it to know where the corners were.

Q. Well, you did see the word "Homesite" there, did you not? A. Yes.

Q. Now, by the time you saw the word "Homesite" you already had the information from Mr. Yardley that this was supposed to be a mining claim. What did you think when you saw the word "Homesite" on this map?

A. I thought Cecil Yardley had given me misinformation. We had a lot of that.

Q. Did you, yourself, make any further inquiry to reconcile this information as between the mining claim on the one hand and the homesite language that you had seen on the map?

A. As I stated in my deposition, I talked to a couple of old timers down in Orleans regarding the matter just for casual conversation. One was Mr.

(Testimony of Charles E. Young.)

Van Pelt who is an owner of a store there in Orleans, and the other was Ernest [270] Anderson, another elderly man. They stated that they remembered that it was John Patterson's homesite.

Q. And they knew John Patterson?

A. They knew of him.

Q. They knew of him? A. Yes.

Q. And did they tell you of this description in this patent?

A. I knew of no description.

Q. Now, did they tell you? A. No, sir.

Q. Did you make any further inquiry?

A. No, sir.

Q. Did you ask them whether it was a homesite or a mining claim?

A. No, sir. I had made up my own mind by then.

Q. And what was your conclusion?

A. Home site.

Q. Home site? A. Yes, sir.

Q. Now, you went with Mr. Cookman and Mr. Starritt down to look at the property, didn't you?

A. Yes, sir.

Q. And I believe you said it is part of your duties to locate property when you are given a legal description? A. Yes, sir.

Q. Have you had surveying experience, Mr. Young? [271] A. Yes, sir.

Q. How much of it?

A. Oh, about eight years active.

(Testimony of Charles E. Young.)

Q. You are then capable of making a survey yourself? A. Yes, sir.

Q. Now, you went down with Mr. Cookman and Mr. Starritt. Did they point out the land to you, or did you locate it from the map that you had?

A. They showed me the corner where I started from, and from then on I took it.

Q. Following the map that you had?

A. Yes, sir.

Q. Then I believe you said that you made two runs through the property? A. Yes, sir.

Q. Now, you saw land with timber on it, didn't you? A. Yes.

Q. Were there any buildings on that parcel of land? A. No, sir, no buildings.

Q. Were there any improvements of any kind on that parcel of lands? A. No, sir.

Q. Did the land give any evidence or cultivation? A. No, sir.

Q. Did you see any notice of a mining claim? By "Notice" I mean [272] the posted notice.

A. No, sir.

Q. Do you know what the maximum acreage is allowed for a mining claim?

A. Well, you can have 1320 feet by 1660, I think.

Q. That's 20 acres, isn't it? A. Yes.

Q. And this was 62½ acres?

A. Yes, but it could have been two claims.

Q. Pardon me?

A. It could have been two claims.

Mr. Petrie: I have no further questions.

EDWARD STRAUSER

called as a witness by Defendant Orleans, being first duly sworn, testified as follows:

The Court: Your name, please?

The Witness: Edward William Strauser.

The Court: Spell your last name. [273]

The Witness: S-t-r-a-u-s-e-r.

The Court: Where do you live?

The Witness: Eureka, California.

The Court: Eureka?

The Witness: Yes.

The Court: Your business?

The Witness: I am the Controller for the Orleans Veneer & Lumber Company.

The Court: Take the witness.

Direct Examination

Q. (By Mr. Cissna): Mr. Strauser, do you know Mr. Blaylock? A. Yes, I do.

Q. When did you first meet Mr. Blaylock?

A. In our office at Arcata after I had the agreement drawn up where we were to advance the money, and he was to advance the logs. I don't remember the date. It was a week or so after Mr. Young's last report.

Q. Was that the date you signed the agreement?

A. Yes, it was, I believe.

Q. That was the first time you met him?

A. Yes, sir.

Q. Showing you Plaintiff's Exhibit 15, an agreement with a blank day of November, 1956, between Orleans Veneer & Lumber Company and Joseph

(Testimony of Edward Strauser.)

Blaylock, is that the agreement to which you refer?

A. Yes, that is the agreement.

Q. Showing you a copy of this agreement, your office copy, the original thereof with the date thereon, is that the date that agreement was entered into?

A. Yes, sir. That's my handwriting.

Q. And what date was that?

A. December 1, 1956.

Q. And this document refreshes your recollection of the first day you met Mr. Blaylock?

A. Yes, sir.

Q. And the signature upon this agreement is your signature on behalf of Orleans Veneer & Lumber Company? A. It is.

Q. And that was your signature on Plaintiff's Exhibit 15 which was shown to you?

A. Yes, sir.

Q. Prior to that had you had any correspondence with Mr. Blaylock? A. None.

Q. Had you had correspondence with Mr. Young concerning this situation or concerning your purchase or loaning money on this timber?

A. Just a report, a radio conversation, as he testified.

Q. And it was your request that Plaintiff's Agreement referred to be prepared? [275]

A. That's right.

Q. Who prepared it?

A. It was prepared by one of our office secretaries. It was copied more or less along the same lines as we did other agreements.

(Testimony of Edward Strauser.)

Q. In other words, you have made advancements on timber in other situations?

A. Yes.

Q. Did Mr. Blaylock sign the agreement in your presence on December 1st?

A. I believe he did.

Q. Did you also prepare an assignment?

May I have Plaintiff's Exhibit 8, please?

Do you recall preparing an assignment of a deed?

A. Yes, I do.

Q. Showing you Plaintiff's Exhibit 8, I will ask you if this is a copy of the assignment which you prepared? A. Yes, sir.

Q. And did Mr. Blaylock sign this instrument in your presence?

A. Yes, he did, and in the presence of the Notary Public in our office.

Q. And did his wife sign the instrument in your presence?

A. No. She was not there that day. Mr. Blaylock took the agreement with him to obtain her signature.

Q. He took the agreement—he took the assignment or the——[276]

A. He took the assignment.

Q. He left the agreement with you?

A. Yes, sir.

Q. Did he at that time present to you his original deed of this property?

A. Yes. That's where we got the description of the property from the deed.

(Testimony of Edward Strauser.)

Q. At the time you prepared this agreement, did you have the legal description of the property in Section 34? A. No, we did not.

Q. The first time you saw the description was when he came back in with the deed? A. Yes.

Q. Did he present to you any other evidence of his legal ownership of Section 34?

A. No. That was all.

Q. Did he have any title insurance policy, Mr. Strauser?

A. I don't recall if I saw the title insurance policy or not, but I understood he had obtained one. But I was not concerned with that.

Q. What steps did you take on behalf of your company to complete this transaction of money in order to transact the title of money in Section 34 to be certain it was clear?

A. The check was drawn to the title company in Yreka.

Q. The Siskiyou County Title Company? [277]

A. Yes. And when Mr. Blaylock returned the assignment to them and sent it to his wife, they were able to return it to us in the amount of \$9000, showing the land to be free and clear.

Mr. Cissna: Just a minute, your Honor.

(Discussion off the record.)

Mr. Cissna: There being no objection, you may as well mark this letter dated December 3, 1956, sent to the Siskiyou County Abstract Company, Yreka, California, by Mr. Strauser.

The Court: It may be so marked.

(Testimony of Edward Strauser.)

The Clerk: Defendants' Exhibit L.

(Letter Dec. 3, 1956 from Mr. Strauser to Siskiyou County Abstract Co. marked Defendant Orleans Exhibit L in evidence.)

Mr. Cissna: Q. Mr. Strauser, showing you Defendant's Exhibit L, I will ask you if this is your copy of the office letter which you directed to the Siskiyou County Abstract Company?

A. It is. I would like to change one part of my testimony there. I notice the check was made payable to Mr. Blaylock and not the title company, and they were instructed to release the check.

Mr. Cissna: For the record, I will read Defendant's Exhibit L, a letter dated December 3, 1956.

* * * * * [278]

Subsequent to that letter did you receive any correspondence from the Siskiyou County Title Company?

A. Yes. Didn't I ask them—I think I made a pencil notation on the bottom of the letter to the effect of wiring us the day they released the check to Mr. Blaylock so we would know when it was coming out of our accounts, and they prepared a [279] quitclaim deed that they wanted us to file so they could file it with Mr. Blaylock after the indebtedness was repaid. I wrote back and told them that we didn't want to——

Mr. Petrie: Now, your Honor, I object. I thought it was going to be an identification of the correspondence, and apparently it is going beyond

(Testimony of Edward Strauser.)

that. If these letters say that, then I suggest they should be identified and read.

Mr. Cissna: That is what I was going to do. However, I didn't want to interrupt the witness.

Q. Showing you a letter from the Siskiyou County Abstract Company dated December 11, 1956, and a letter from you to the Siskiyou County Abstract Company dated December 13, 1956, I will ask you if those are the letters to which you refer?

A. Yes, sir.

Mr. Cissna: We will ask that these two documents be entered as Defendant's Exhibit next in order.

Mr. Petrie: No objection.

The Court: They may be admitted and marked.

The Clerk: Defendant's Exhibit M.

(Letter Dec. 11, 1956 from Siskiyou County Abstract Co. to Mr. Strauser and letter dated Dec. 13, 1956 from Mr. Strauser to Siskiyou County Abstract Co. were marked Defendant Orleans Exhibit M in evidence.)

Mr. Cissna: Reading the first document of Defendant's Exhibit M from Siskiyou County Abstract Company, Yreka, dated [280] December 11, 1956. [281]

* * * * *

Q. Following this letter, or series of letters, did the Siskiyou County Abstract Title Company issue a policy of insurance in favor of Orleans Veneer & Lumber Company as instructed in these documents? A. They did.

(Testimony of Edward Strauser.)

Mr. Cissna: We will offer in evidence as Defendant's next exhibit in order a title insurance policy in behalf of [282] Orleans Veneer & Lumber Company.

The Court: Any objections?

Mr. Petrie: No objections, your Honor.

The Court: Very well.

The Clerk: Defendant's Exhibit N.

(Title insurance policy in favor of Orleans Company marked Defendant's Exhibit N in evidence.)

Mr. Cissna: Q. And further, Mr. Strauser, did you receive a bill from the Siskiyou County Abstract Company for the issuance of this title insurance policy for certain recording charges?

A. We did.

Q. And did you pay the sum? A. We did.

Mr. Cissna: I next offer in evidence the bill referred to.

The Court: It may be admitted and marked.

The Clerk: Defendant's Exhibit O.

(Bill for recording charges from Siskiyou to Orleans Co. marked Defendant's Exhibit O in evidence.)

Mr. Cissna: Q. Showing you Defendant's Exhibit N, is this the policy of title insurance which you received? A. That is it, yes.

Q. And the property described therein is the property in Section 34; is that correct? [283]

A. That's correct.

Mr. Cissna: Does the Court wish to review this?

(Testimony of Edward Strauser.)

The Court: No.

Mr. Cissna: Q. And showing you Defendant's Exhibit O, is this the billing of the charges which you paid? A. That's right.

Q. From the Siskiyou County Abstract Co.?

A. That's right.

Q. And the amount of that bill was \$71.60 for the continuation of policy of title insurance in the amount of \$9000.00, to recording agreement, to drawing quitclaim deed, and to recording said quitclaim deed? A. Yes.

Q. Did they actually record the quitclaim deed, Mr. Strauser?

Mr. Petrie: If he knows.

Mr. Cissna: Q. If you know.

A. I couldn't say yes or no.

Q. Under your instructions they were not authorized to record such a deed; is that correct?

A. No, they were not to record it.

Q. And to your best knowledge, that deed is still not recorded?

Mr. Petrie: I object.

I will withdraw the objection.

A. No.

Mr. Cissna: Q. Have any sums been paid by Mr. Blaylock [284] to Orleans on the \$9000.00 loan? A. No.

Q. Have any logs been delivered to Orleans by Mr. Blaylock out of Section 34?

A. Not that we know of.

Q. In other words, the agreement entered into

(Testimony of Edward Strauser.)

by you and Mr. Blaylock has not been entered into in any way?

Mr. Petrie: I object.

The Court: The objection will have to be sustained.

Mr. Cissna: Q. Going back to 1955 and including 1956, did Orleans Veneer & Lumber Company purchase any logs from Joseph Blaylock?

A. No.

Q. At the time of your deposition in October of this year taken by Mr. Petrie in the City of Eureka, California, you were asked by Mr. Petrie to search the records of Orleans Veneer & Lumber Company to determine if any logs were purchased from Joseph Blaylock during 1955 and 1956. Did you search those records?

A. I personally searched those records and also the girl in the office. There was no record of any logs being purchased by Mr. Joseph Blaylock during that period.

Mr. Cissna: I believe that is all.

Mr. Hennessy: No questions, your Honor. [285]

Cross Examination

Q. (By Mr. Petrie): Well, Mr. Strauser, you heard Mr. Blaylock say that in 1955 he sold 57,000 board feet of logs to your company, did you not?

A. Yes, I did.

Q. Have you any reason to believe that he is mistaken?

A. No. I might explain this. The logs did not

(Testimony of Edward Strauser.)

come in under the name of Joseph Blaylock.

Q. They came in under a different name?

A. Yes. We purchased logs under the name of John Stevens.

Q. What was the amount of the logging that you purchased under Mr. Stevens' name?

A. I think it was 57,500 feet.

Q. The figure that Mr. Blaylock has stated?

A. Yes.

Q. Was Mr. Blaylock present once or twice in your office in Arcata?

A. Once, I believe. It was on the date the agreement was signed.

Q. Did you then prepare the agreement from information supplied to you by Mr. Young and without seeing Mr. Blaylock yourself?

A. Yes. We relied on Mr. Young's reports. We drew up the agreement the way we understood it to be.

Q. Did you ever talk to Mr. Cecil Yardley about this transaction?

A. No, sir. [286]

Q. You do know who Mr. Yardley is, do you not?

A. Yes, sir.

Q. Now, I suppose from time to time your company advances moneys such as was done here; is that so?

A. Yes. It is quite common.

Q. I suppose you advance moneys both to owners who own the land and the timber on it, you advance moneys to people who just have contracts to log the timber?

A. That's right.

Q. Now, when you advance moneys to owners of

(Testimony of Edward Strauser.)

the land and timber, is it not customary in your company to take a deed of trust from those owners to secure the advance made?

A. It is handled both ways: Deeds of trust just assignment of interest such as we did in this case.

Q. Can you recall another transaction——

I show you Plaintiff's Exhibit 8, a copy of the assignment from Mr. Blaylock to you?

A. Yes.

Q. Can you recall another transactions where you advanced moneys to the owner of timber land and took from him such a document as that?

A. I can.

Q. Which one was that?

A. Their name was Bywiler.

Q. When did you advance moneys to him? [287]

A. That would be about two years now, two years ago.

Q. Can you recall any other incidents?

A. Not where this particular assignment was noted, no.

Q. Now, the last several years have you advanced moneys several times to owners of timber land?

A. Not too much. We are trying to get away from that.

Q. Well, how many times since you have been with the company has the company advanced money to owners of timber land?

A. You mean just to the owners of timber land?

(Testimony of Edward Strauser.)

Q. Yes.

A. To the owners of timber land only?

Q. Yes, putting aside for the moment a transaction where the man has a timber cutting contract.

A. I would say about three or four times is all.

Q. And on those occasions except the ones you mentioned, you took deeds of trust for the timber land, did you not?

A. To tell you the truth, I can't rightly answer you on that.

Q. Well, you didn't take an assignment?

A. No.

Q. Such as Plaintiff's Exhibit 8?

A. No, it was another form of agreement drawn up by our attorneys, whatever that might be.

Q. You did not consult your attorneys before having Plaintiff's [288] Exhibit 8 prepared, did you?

A. No, I don't believe so because this was drawn up by another attorney.

Q. It was you who suggested the form to be followed? A. That's right.

Q. And wasn't that form taken from the file of timber cutting contract advances?

A. That's right.

Mr. Petrie: I have no further questions, your Honor.

The Court: Any questions?

Mr. Friedman: No questions, your Honor.

(Testimony of Edward Strauser.)

Redirect Examination

Q. (By Mr. Cissna): How many times during this same period of time, Mr. Strauser, has your company advanced money to timber contractors or loggers?

A. That would be safe to put it that way. I would say it would be anywhere from ten to fifteen, at least.

Q. Under which they had a contract with the owner to remove the timber; is that correct?

A. That's right.

Q. And in those instances what type of security document do you use?

A. It is an agreement and an assignment in one, assigning all their interest in the contract, and an agreement to deliver us [289] all the logs.

Q. In either fashion, do you take a security document securing your advance against the security to the property?

A. That's right. In case anything should happen to the operator, we would go in.

Q. And the document you have in your hand is the security which you accepted in this instance?

A. That's right.

Mr. Cissna: That's all.

The Court: You may be excused.

(Witness excused.) [290]

[Endorsed]: Filed July 7, 1958.

[Endorsed]: No. 16096. United States Court of Appeals for the Ninth Circuit. Joseph F. Blaylock, Appellant, vs. United States of America, Appellee. Orleans Veneer and Lumber Co., a corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeals from the United States District Court for the Northern District of California, Southern Division.

Filed: July 8, 1958.

Docketed: July 18, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 16096

UNITED STATES OF AMERICA,

Appellant,

vs.

JOSEPH F. BLAYLOCK, et al.,

Appellees.

STATEMENT OF POINTS ON APPEAL

Pursuant to rule 75(d) Defendant and Appellant Joseph F. Blaylock intends to rule on the following points on appeal:

(a) That the State of California was a bona fide purchaser for value of the land sought to be re-

formed and therefore any subsequent sale by the State of California cuts off the United State's right to reformation.

(b) That the purchase by H. E. Sims from the State of California of the patent sought to be reformed was a sale to a bona fide purchaser for value and therefore cut off the equities of the United States to the right of reformation.

(c) That the State of California has a right to rely on the regularity of patents issued by the United States and does have a right and jurisdiction to tax lands covered by patents issued by the United States.

(d) That a tax sale regularly held pursuant to California law eliminates all equities of all predecessors in interest to the defaulting tax payer and all lien holders of the defaulting tax payer including the right of the United States to procure a reformation of the original patent.

Dated this 10th day of November, 1958.

BURTON & HENNESSY,
/s/ By MICHAEL T. HENNESSY,

Attorneys for Defendant and Appellant Joseph F.
Blaylock.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 12, 1958. Paul P.
O'Brien, Clerk.